

Regular Meeting

The regular meeting of the City Council of the City of Fitchburg was held in the Memorial Middle School Auditorium, 615 Rollstone St., Fitchburg, on April 3, 2018. The meeting was called to order by President Michael Kushmerek at 7:18 P.M. The Clerk called the roll and eleven (11) Councillors were present. The meeting opened with a salute to the Flag led by Councillor Walsh.

For the Record

Noted for the record:  
FATV was recording the audio and video of the meeting.  
Elizabeth Dobbins, Sentinel and Enterprise stated that she was recording the meeting.

Communication  
His Honor the Mayor  
Appointment Letters

COMMUNICATION FROM HIS HONOR THE MAYOR

Appointment Letters

1. Captain Anthony Marrama, as permanent Deputy Fire Chief, to replace Deputy Chief David Gravel who will retire April 8, 2018.
2. Lieutenant Dante Suarez to permanent Fire Captain, to replace Captain Marrama.
3. Firefighter Robert DaCosta to permanent Fire Lieutenant, to replace Lt. Suarez.
4. Lieutenant Richard Jollimore to permanent Fire Captain.



*The City of Fitchburg*  
FITCHBURG CITY CLERK  
*Massachusetts*  
2018 MAR 27 PM 12:45  
OFFICE OF THE MAYOR

STEPHEN L. DINATALE  
MAYOR

166 BOULDER DRIVE  
FITCHBURG, MA 01420  
TEL (978) 829-1801

March 26, 2018

The Honorable City Council  
Fitchburg Municipal Offices  
166 Boulder Drive, Suite 108  
Fitchburg, MA 01420

Dear Honorable Councilors,

I hereby appoint within the City of Fitchburg Fire Department:

Captain Anthony Marrama as permanent Deputy Fire Chief.  
This appointment is to replace Deputy Chief David Gravel who will retire on April 8, 2018.

Lieutenant Dante Suarez to permanent Fire Captain.  
This appointment will replace Captain Marrama.

Firefighter Robert DaCosta to permanent Fire Lieutenant.  
This appointment will replace Lt. Suarez.

Lieutenant Richard Jollimore to permanent Fire Captain.  
Jollimore has been a provisional Captain for three years while the department waited for a certification list from Civil Service.

These candidates have received the highest marks on the Civil Service Exam.  
All of these appointments will take effect on April 9, 2018.

If you have any questions regarding these promotions please do not hesitate to contact my office.

Sincerely,

Stephen L. DiNatale  
Mayor

AARON TOURIGNY  
CHIEF OF STAFF  
ATOURIGNY@FITCHBURGMA.GOV  
JOAN DAVID  
ADMINISTRATIVE AIDE  
JDAVID@FITCHBURGMA.GOV

Council approval not required for confirmation. Appointees were sworn in by the City Clerk. 11 members present. Board consists of 11 members.

Communication  
Pension Reserves  
Investment  
Management Board

COMMUNICATION  
Pension Reserves Investment Management Board

84 State Street, Suite 250  
Boston, Massachusetts 02109

Pension Reserves Investment Management Board

Fitchburg Retirement System  
General Allocation Account  
February 01, 2018 to February 28, 2018

Deborah B. Goldberg, Treasurer and Receiver General, Chair  
Michael G. Troitsky, CFA, Executive Director



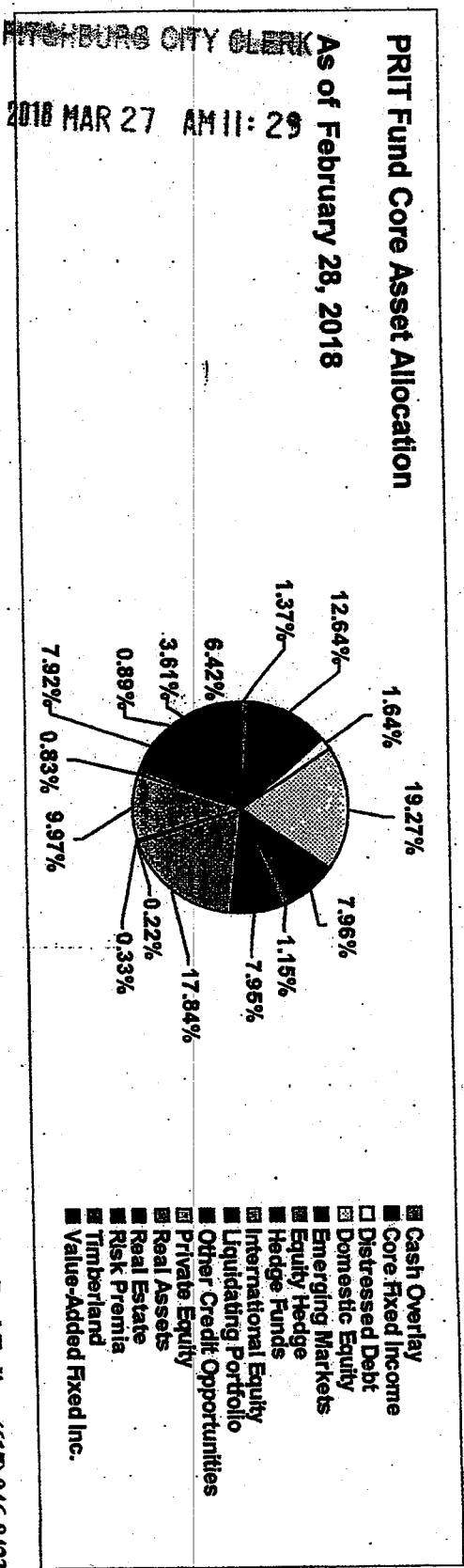
Your beginning net asset value for the period was:  
Your change in investment value for the period was:  
Your exchanges from (to) the Cash Fund for the period were:  
Your ending net asset value for the period was:

Month To Date	Fiscal Year To Date	Calendar Year To Date
121,817,622.70	105,663,577.51	119,575,030.82
(2,923,343.79)	9,126,617.59	319,248.09
(1,000,000.00)	3,104,083.81	(2,000,000.00)
117,894,278.91	117,894,278.91	117,894,278.91

Net Change in Investment Value represents the net change through investment activities as follows:  
Gross Investment Income:  
Less Management Fees:  
Net Investment Income:  
Net Fund Unrealized Gains/Losses:  
Net Fund Realized Gains/Losses:  
Net Change in Investment Value as Above:

191,588.07	1,758,885.37	321,797.42
(19,585.70)	(333,087.86)	(39,864.39)
172,002.37	1,425,797.51	281,933.03
(3,587,147.07)	3,772,479.33	(1,149,274.85)
491,800.91	3,928,340.75	1,186,589.91
(2,923,343.79)	9,126,617.59	319,248.09

As of February 28, 2018 the net asset value of your investment in the PRIT Fund was: \$117,894,278.91



If you have any questions regarding your statement, please contact your Senior Client Services Officer Paul Todisco (617) 946-8423.  
A detailed statement of your account is attached to this summary sheet.

Reports of  
Committees

Appointments  
Committee  
Oral Report

REPORTS OF COMMITTEES

Appointments Committee Oral Report  
Meeting of April 3, 2018

The Appointments Committee recommended the following Appointments be confirmed:

Re-Appointments:

Fitchburg Redevelopment Authority Board of Directors

(Term to expire July 1, 2021)

Mr. George Leondhardt

Member of the Board of Commissioners of Trust Funds

(Term to expire January 1, 2021)

Mr. David Brassard

Fitchburg Council on Aging

(Term to expire March 1, 2021)

Mr. John Antilla

New Appointment

Fitchburg Council on Aging

(Term to expire March 1, 2021)

Ms. Nancy Fors

Report accepted. Appointments confirmed by unanimous vote. 11 members present. Board consists of 11 members.

Council as a  
Whole Committee

Council as a Whole Committee  
Meeting of March 27, 2018

The Council as a Whole Committee recommended the following Ordinance be amended to include the revised fees table, and send to a First Reading as amended:

066-18. AN ORDINANCE: Be it ordained by the City Council of the City of Fitchburg that Chapter 147-35 of the Code of the City of Fitchburg relative to the adoption of charges and fees, be and hereby is amended as follows; By inserting the following table of Chapter 147, Section 35.2;  
(Revised Chart attached)

Be it ordained by the City Council of the City of Fitchburg that Chapter 147-35 of the Code of the City of Fitchburg relative to the adoption of charges and fees, be and hereby is amended as follows;

By inserting the following table of Chapter 147, Section 35.2;

Current Rate	June 1, 2018	June 1, 2019	June 1, 2020	June 1, 2021	June 1, 2022
\$18.85	\$20.36	\$21.99	\$23.53	\$25.17	\$26.81

	Current Rate	June 1, 2018	June 1, 2019	June 1, 2020	June 1, 2021	June 1, 2022
Rate per 100 cubic feet (which equals 748 gallons)	\$7.30	\$7.88	\$8.51	\$9.11	\$9.75	\$10.38

Current Rate	June 1, 2018	June 1, 2019	June 1, 2020	June 1, 2021	June 1, 2022
\$60.83	\$65.67	\$70.92	\$75.92	\$81.25	\$86.50

Report read and accepted. Ordinance amended to include the revised fees table. Ordinance as amended was passed to a first and second reading and ordered advertised by unanimous vote. 11 members present. Board consists of 11 members.

*Amendment  
Revised 3/20/18*

**Finance Committee**  
**Meeting of March 27, 2018**

The Finance Committee recommended the following Order be given leave to withdraw:

- 054-18. ORDERED THAT: There be and hereby is appropriated the sum of TWENTY-TWO THOUSAND, THREE HUNDRED THIRTY-ONE AND 00/100 DOLLARS (\$22,331.00) same to be charged against AVAILABLE FUNDS and credited to LAW OTHER EXPENSES, DAMAGES TO PERSONS AND PROPERTY for the purpose of paying the deductible incurred in connection to the fire damage to the Crocker Field Concession Stand.

Report read and accepted. Order given leave to withdraw by unanimous vote. 11 members present. Board consists of 11 members.

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The Finance Committee recommended the following Orders be adopted:

- 055-18. ORDERED THAT: There be and hereby is appropriated the sum of ONE HUNDRED THIRTY THOUSAND TWO HUNDRED EIGHTY-THREE DOLLARS (\$130,283), same to be charged against AVAILABLE FUNDS and credited to accounts as follows:
- |                                       |          |
|---------------------------------------|----------|
| FIRE-Personal Services:               | \$ 520   |
| DPW-Highway General Personal Services | \$81,391 |
| DPW-Snow & Ice Personal Services      | \$15,015 |
| DPW-Cemetery Personal Services        | \$18,422 |
| DPW-Parks Personal Services           | \$14,935 |

- 056-18. ORDERED THAT: There be and hereby is transferred from within the following Personal Services Accounts the sum of EIGHTY-ONE THOUSAND THREE HUNDRED NINETY-FOUR DOLLARS (\$81,394), same to be credited to the respective Fiscal Year 2018 Personal Services Accounts:
- |                            |          |
|----------------------------|----------|
| Water Enterprise Fund      | \$64,488 |
| Wastewater Enterprise Fund | \$16,906 |

Report read and accepted. Orders adopted by unanimous vote. 11 members present. Board consists of 11 members.  
Orders signed by the Mayor April 5, 2018.

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The Finance Committee recommended the following Order be adopted:

- 057-18. ORDERED THAT: There be and hereby is transferred from within the sum of THIRTY THOUSAND AND 00/100 DOLLARS (\$30,000.00) same to be transferred from YEAR 41 HOMEOWNER REHABILITATION PROGRAM to YEAR 43 DOWN PAYMENT ASSISTANCE PILOT PROGRAM.

Report read and accepted. Order adopted by vote of 9 in favor and 2 opposed (Beauchemin, Donnelly). 11 members present.  
Board consists of 11 members.  
Order signed by the Mayor April 5, 2018.

Reports of  
Committees

Finance Committee  
(cont)

The Finance Committee recommended the following Orders be adopted:

- 058-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Stanton Foundation grant in the approximate amount of \$201,015.00 (TWO HUNDRED ONE THOUSAND, FIFTEEN AND 00/100 DOLLARS) for the purpose of said grant, which is to construct a Municipal Dog Park at Coolidge Park.
- 059-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Friends of Fitchburg Dogs gift in the approximate amount of \$22,335.00 (TWENTY-TWO THOUSAND, THREE HUNDRED THIRTY-FIVE AND 00/100 DOLLARS) for the purpose of said gift, which is to construct a Municipal Dog Park at Coolidge Park.

Report read and accepted. Orders adopted by unanimous vote. 11 members present. Board consists of 11 members. Orders signed by the Mayor April 5, 2018.

**Planning Board**  
**Meeting of March 15, 2018**

The Planning Board recommended the following Ordinance be amended, and be adopted as amended.

- 031-18. AN ORDINANCE:
1. To add a new section 181.65, Marijuana Establishments, to regulate non-medical marijuana as outlined in the enclosed Ordinance.
  2. To amend the definitions of RMD, MMD and MMM in Section 181.10 to remove a requirement that the operator be a non-profit entity as follows.
  3. To add the following Section Regulating signs.
  4. to amend the requirements for site plan review by amending Section 181.9414 as follows.
  5. To amend the prohibited home occupations by adding the following to Section 181.333 (Prohibited Home Occupations)



**CITY OF FITCHBURG**  
**PLANNING BOARD**

166 BOULDER DRIVE  
FITCHBURG, MASSACHUSETTS 01420

(978) 829-1891  
PHONE

(978) 829-1965  
FAX

**DATE:** March 29, 2018

**TO:** City Council  
City Clerk

**FROM:** Paula Caron, Chair  
Fitchburg Planning Board

**SUBJECT:** Ordinance #31-2018 to amend Section 181.65 Marijuana Establishments

2018 MAR 29 PM 4:07  
FITCHBURG CITY CLERK

At its March 13, 2018 meeting the Fitchburg Planning Board voted unanimously to recommend in favor of the above-noted Ordinance, with a couple of suggestions:

- Amend Section 181.6511 by changing "60 days" to "30 days" in the last sentence.
- Amend Sections 181.6546 & 181.656 to also allow Independent Testing Facility in the Neighborhood Business District (NBD).
- Establish a minimum distance between Marijuana Retailers (MEs) of 1,000 feet, as measured in a straight line between from the nearest point of the property lines of the parcels where the MEs are proposed.
- Amend Sec. 181.6546 by expanding the areas where Marijuana Retailers (MEs) are allowed by Special Permit from the Planning Board to not only the two existing areas in the Medical Marijuana Overlay District (MMOD), but also four additional corridors, as shown on the attached maps:

1. The John Fitch Highway portion of the CBD between Summer St. & Lunenburg St.
2. The CBD & NBD-zoned portion of the South St. / Whalon St. corridor.
3. The Water St. area (Central Plaza) between the Nashua River & the railroad.
4. River St. from Kimball Place westerly to the Cleghorn Rotary and Oak Hill Rd.

The Board also discussed allowing retail sales of marijuana along the Main St. corridor, however they do not recommend allowing dispensaries on Main Street due to the visibility issues outlined by Chief Martineau as well as limited parking, particularly due to the in-and-out nature of this business, similar to liquor stores (which, principally for this reason do not currently flourish downtown).

Planning Board recommendation - Petition #31-2017

Page 2

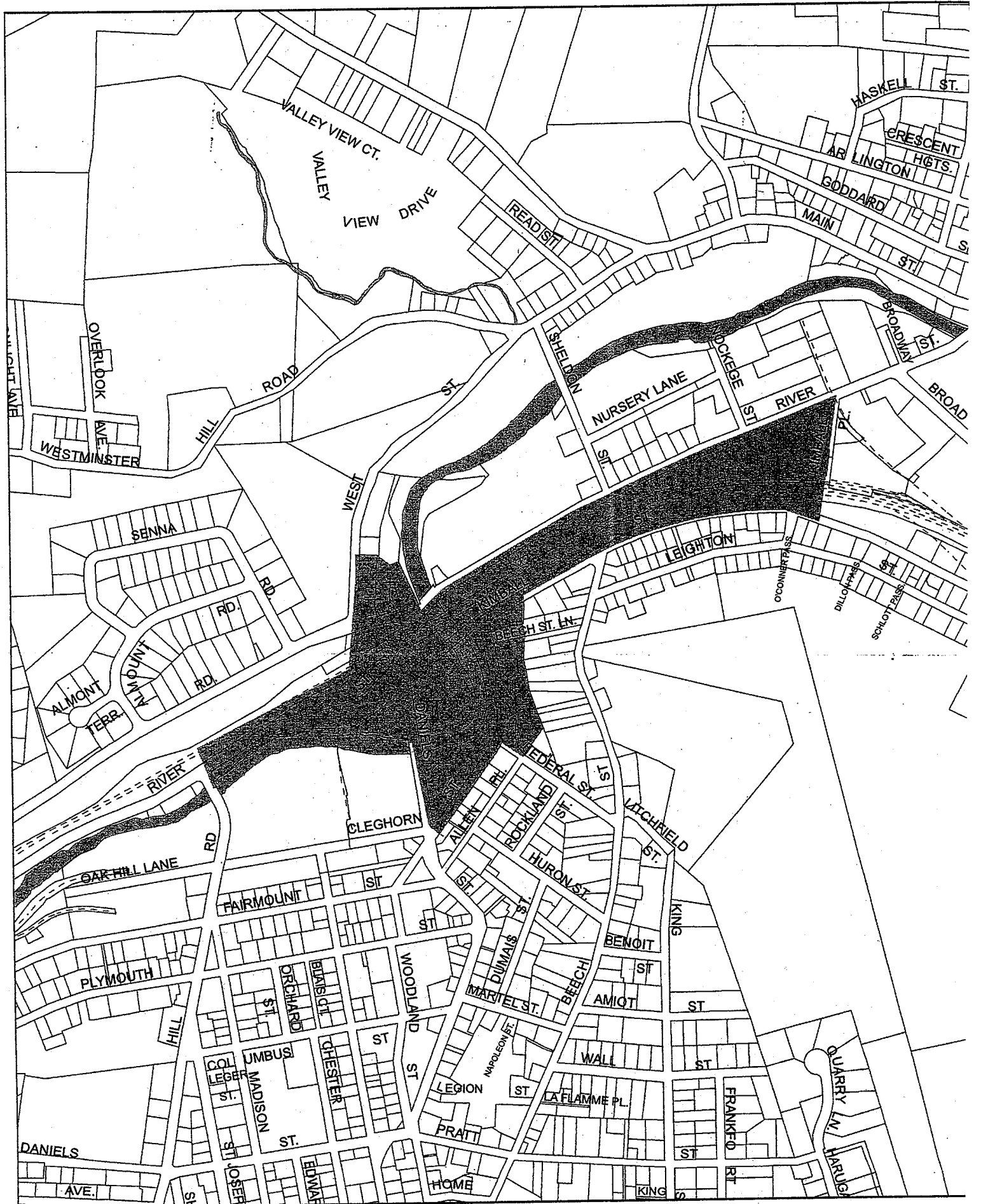
At their Public Hearing the Planning Board heard many hearing participants express the concern that NO Medical or Recreational Marijuana Establishment (*cultivation, processing or retail sales*) be allowed in any of the Residential Districts (RR, RA-1, RA-2, RB, RC). The Board agrees with this view.

The Board notes that at some point in the future the City should consider changing the medical marijuana ordinance to mirror the changes in this proposed Ordinance.

cc: Law Dept.  
Planning Board members

attachments

## River/Kimball Street Area



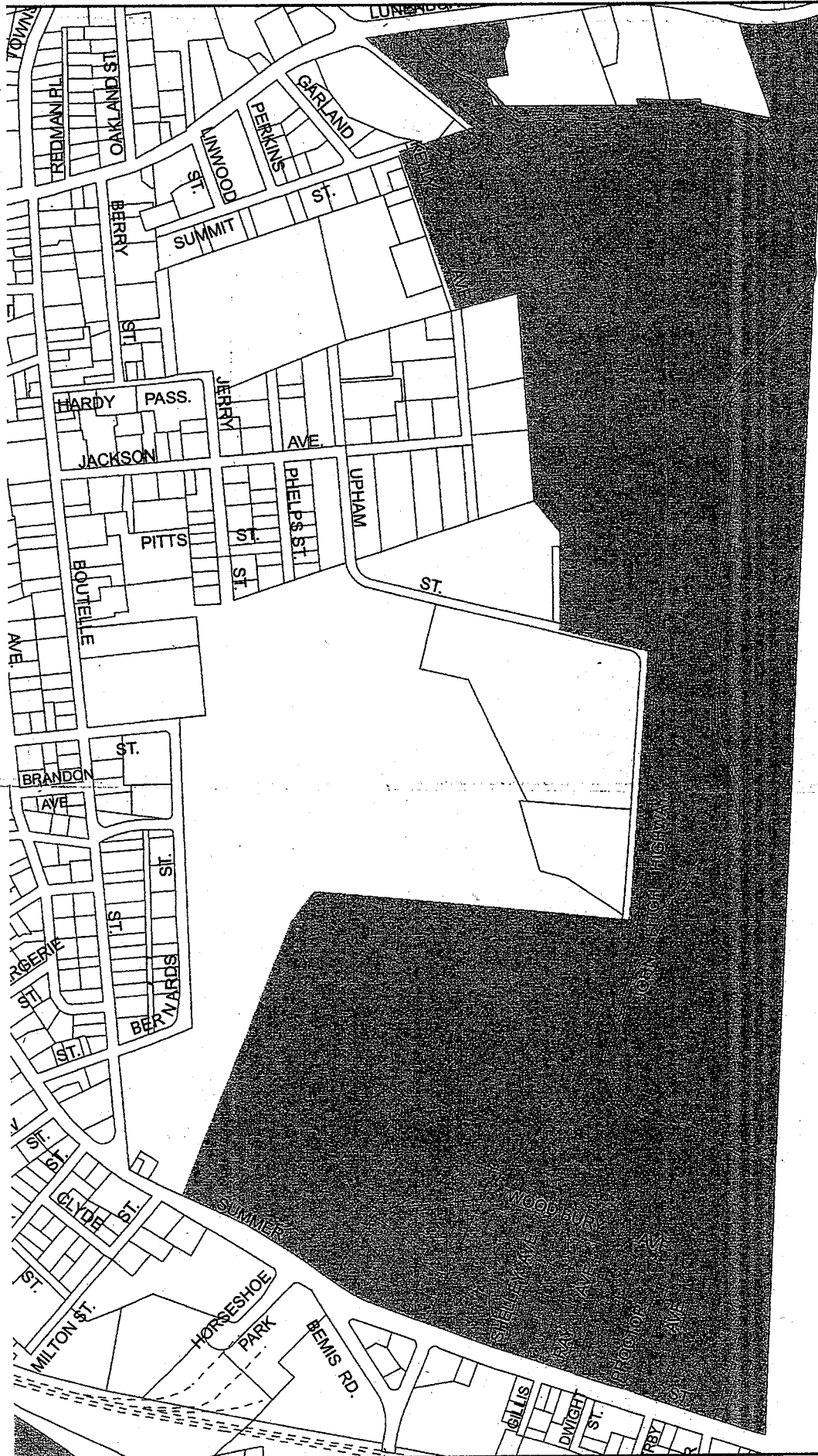
**Water Street Area**





Reports of  
Committees  
Planning Board  
(cont)

## John Fitch Highway Area



**South/Whalon Street Area**



## CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 15 AM 9:32

## AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

**Section 181.65 - MARIJUANA ESTABLISHMENTS**

**181.651 Regulation.** G.L. c. 94G authorizes a system of state licensing for businesses engaging in the cultivation, testing, processing and manufacturing, and retail sales of non-medical marijuana, collectively referred to as Marijuana Establishments (MEs). G.L. c. 94G §3 allows cities to adopt ordinances that impose reasonable safeguards on the operation of non-medical marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with the law. The special permit and site plan review requirements set forth in this Section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.

**181.652 Purpose.** The purpose of this ordinance is to allow state-licensed MEs to exist in the City of Fitchburg in accordance with applicable state laws and regulations and impose reasonable safeguards to govern the time, place and manner of ME operations and any business dealing in Marijuana Accessories in such a way as to ensure public health, safety, well-being, and reduce undue impacts on the natural environment as it relates to cultivation, processing and manufacturing subject to the provisions of this Zoning Ordinance, M.G.L. c. 40A, M.G.L. c. 94G and any other applicable law. Therefore, this ordinance may permit MEs in locations suitable for lawful MEs where there is access to regional roadways, where they may be readily monitored by law enforcement for health and public safety purposes, and to minimize adverse impacts on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, operation security, and removal of MEs.

This Section is intended to coexist with the existing Section 181.64 regarding MMDs and MMMs.

**181.653 Definitions.** Where not expressly defined in the Zoning Ordinance, terms used in this Zoning Ordinance referring to non-medical use marijuana shall be interpreted as defined in G.L. c. 94G, as the same may be amended from time to time, and regulations issued by the Cannabis Control Commission (CCC). The following definitions, consistent with this expressed intent, shall apply in the interpretation and enforcement of this section:

1. "Marijuana Products", products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for non-medical use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
2. "Marijuana Establishment" (ME), a Marijuana Cultivator, Independent testing laboratory, Marijuana Product Manufacturer, Marijuana Retailer or any other type of licensed non-medical marijuana-related business.

3. "Marijuana Cultivator" (MC), an entity licensed to cultivate, process and package non-medical marijuana, to deliver non-medical marijuana to ME's and to transfer marijuana to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MC.
4. "Marijuana Product Manufacturer" (MPM), an entity licensed to obtain, manufacture, process and package non-medical marijuana and marijuana products, to deliver non-medical marijuana and marijuana products to ME's and to transfer non-medical marijuana and marijuana products to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MPM.
5. "Marijuana Retailer" (MR), an entity licensed to purchase and deliver non-medical marijuana and marijuana products from ME's and to deliver, sell or otherwise transfer non-medical marijuana and marijuana products to ME's and to consumers.
6. "Independent testing laboratory", a laboratory that is licensed by the CCC and is:
  - (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the CCC; (ii) independent financially from any medical marijuana treatment center or any licensee or ME for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the CCC pursuant to G.L. c. 94G.
7. "Experienced Operator," any MMD or MMM facilities, as defined by Section 181.64 of the Zoning Ordinance, having already received a special permit and site plan review approval by the City, prior to the passage of Section 181.65 of this Ordinance, which remain in good standing without violation of any ordinance, statute, or condition of their special permit.
8. "Moral Character" means the degree to which a person's history demonstrates honesty, fairness and respect for the rights of others and for conformance to the law, which may include consideration of whether an individual has:
  - a. Ever had a professional license denied, suspended or revoked;
  - b. Ever had a business license denied, suspended or revoked;
  - c. Ever had a marijuana-related business license denied, suspended, revoked, or placed on administrative hold, or was subjected to a fine for violation of a marijuana-related zoning ordinance;
  - d. Ever had a business temporarily or permanently closed for failure to comply with any tax, health, building, fire, zoning or safety law;
  - e. Ever had an administrative, civil or criminal finding of delinquency for failure to file or failure to pay employment, sales, property or use taxes;
  - f. Ever been convicted of a felony, sex offense, or other offense involving violence, distribution of controlled substances, excluding marijuana-related possession offenses, or other moral turpitude;
  - g. Within the previous sixty months been convicted of a misdemeanor or other offense involving the distribution of controlled substances, or driving under the influence of alcohol or other substance (DUI, OUI) convictions

**181.654 Prohibitions and Limitations.**

181.6541 It shall be unlawful for any person to operate a ME without obtaining a special permit and undergoing site plan approval pursuant to the requirements of this Ordinance, except as provided for an Experienced Operator.

181.6542 An Experienced Operator may operate a ME of the same type as the medical marijuana facility for which they have been granted a special permit and approved site plan review by the City without obtaining a new special permit, provided that the Experienced Operator must receive site plan approval for the new use as a ME, that the ME is located in the same facility for which the Experienced Operator received the prior special permit and site plan approval, and that the gross square footage of such facility is not increased by more than ten (10%) percent.

181.6543 A separate special permit is required for each different ME detailed in section 181.653, above, or in the case of an Experienced Operator, a separate site plan review.

181.6544 As defined in G.L. c. 94G, and as established in Section \_\_\_\_\_ of the Fitchburg City Code, the number of MRs shall be limited to no more than 20% of the number of licenses issued within the city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under G.L. c. 138, §15. No special permit may be granted for a MR which results in a violation of this limit.

181.6545 A ME may only be involved in the use permitted by its definition. MRs may only be located in buildings containing other retail, commercial, residential, industrial, or any other uses, including other types of MEs, if the MR is separated by full walls from any and all other uses.

181.6546 MRs may be permitted under special permit by the Planning Board in the MMOD District. Independent Testing Facilities may be permitted under special permit by the Planning Board in the Industrial (I), Light Industrial (LI), Central Business (CBD) and Commercial & Automotive (C&A) Zoning Districts. On-site or social consumption, so called, is prohibited as a use. All other MEs may be permitted under special permit by the Planning Board in the Industrial and Light Industrial Zoning Districts.

181.6547 MEs shall be prohibited as an Accessory Use or Home Occupation in all zoning districts. No ME shall be permitted to have drive-up or walk-up facilities as described in Section 181.3246 of this Zoning Ordinance.

181.6548 No marijuana or Marijuana Product shall be smoked, eaten, ingested, consumed or otherwise used within the premises of any ME.

181.6549 No ME may be operated in a mobile facility or outside of a fully enclosed building or structure, excepting deliveries to off-site MRs and home deliveries to consumers permitted or licensed by applicable state and local regulations.

181.65410 No ME may be operated in such a manner as to cause or create a public nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

181.65411 The issuance of a special permit and site plan review pursuant to this chapter does not create an exception, defense, or immunity to any person or entity in regard to any potential criminal liability the person or entity may have for the production, distribution, or possession of marijuana.

**181.655 Application.** In addition to the materials required under Section 181.93 (Special Permits) and Section 181.94 (Site Plan Review) of this Ordinance, the applicant shall submit the following:

1. All materials required under Section 181.645 of this Zoning Ordinance for an MMD or MMM facility, with the exceptions that any reference within Section 181.645 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME.
2. Proof of approval from the Commonwealth of Massachusetts for the proposed ME by submitting copies of all required registrations, licenses and permits issued to the applicant by the state and any of its agencies for the proposed ME.
3. The name, address, email address, and phone number of all designated Managers of the ME, together with a criminal background check of such Managers and other evidence of Moral Character.
4. Proof that the detailed security plan, operation and management plan, and emergency response plans have been submitted to the Fitchburg Police Department and the Department of Planning and Community Development for comment and review at the same time or prior to the submission of the application, and any comment or response received by the applicant.
5. Proof that the applicant provided notification in writing at the same time or prior to the submission of the application to all property owners and operators of the uses listed under 181.656(5) within three hundred (300) feet of its proposed location and use, to provide them with the opportunity to comment to the Planning Board, as well as any and all comment or response received by the applicant.
6. Evidence demonstrating that the ME will be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located. This may include but shall not be limited to evidence of Moral Character.

181.6551 Upon receipt of a completed application, the Planning Board shall refer copies of the application to the Building Department, Fire Department, Police Department, City Council, Board of Health, Conservation Commission, and the Engineering Division of the Department of Public Works. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 60 days of referral of the application shall be deemed lack of opposition.

181.6552 After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other municipal boards and departments, the Planning Board may act upon the application for special permit and approval of site plan.

181.6553 In instances where any portion of a project involves a special permit application to or site plan review by the Planning Board for any ME, the Planning Board shall

serve as the special permit granting authority for all other special permits required in connection with such project.

**181.656 Special Permit Criteria and Findings**

A MR, MC, MPM or Independent Testing Facility may be permitted pursuant to a Special Permit and Site Plan Review granted by the Planning Board. In granting a special permit for a MR, MC, MPM or Independent Testing Facility, in addition to the general criteria for a special permit in Section 181.93 of the Zoning Ordinance, the Planning Board must also make the following findings:

1. If the special permit is for a MR, that the MR is located in the MMDO; or if the special permit is for an Independent Testing Facility, that the Independent Testing Facility is located in the Industrial (I), Light Industrial (LI), Central Business (CBD) and Commercial & Automotive (C&A) Zoning District; or if the special permit is for any other ME, that the ME is located in the Industrial or Light Industrial zoning districts in accordance with 181.313 of the Table of Principle Uses.
2. The applicant has demonstrated that the ME has or will meet all of the permitting requirements of all applicable agencies within the Commonwealth and is or will be in compliance with all applicable state laws and regulations, including, but not limited to G.L. c. 94G, §12 General Marijuana Establishment Operation.
3. The applicant has entered into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.
4. The grant of the special permit will not exceed the limitation on permitted MRs set forth in Section 181.6544.
5. The ME is located at least three hundred (300) feet distant of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, a vocational school, a public or private college, junior college, university or dormitory, a licensed child care facility, a library, a playground, a public park, a youth center, a public swimming pool, a video arcade facility, any facility in which minors commonly congregate, or any residence, including commercial residences such as hotels, motels, lodging houses, etc. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses to the nearest point of the structure of the proposed ME.
  - a. The distance requirement may be reduced by the Planning Board provided that the ME will employ adequate measures to prevent product diversion to minors, and the Planning Board determines that a shorter distance, adequately buffered, will suffice to accomplish the objectives set forth under 181.65
6. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance and any applicable city ordinances.
7. The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public and that storage and location of cultivation is adequately secured.
8. The facility meets all criteria required for a Special Permit for an MMD or MMM under Section 181.645 of this Zoning Ordinance, with the exceptions that



- a. Any reference within Section 181.645 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME; and
  - b. Location in an area which does not have reasonable access to medical marijuana pursuant to Section 181.644(a) shall not be required.
9. The applicant has demonstrated, by substantial evidence of Moral Character and other evidence, that it will operate the ME in conformity with all applicable municipal ordinances, state laws and regulations and that its policies and procedures are designed to prevent violation of such laws, particularly including but not limited to Section 181.654 above.

#### **181.657 Site Plan Review/Special Permit Conditions**

The Planning Board shall conduct site plan review and shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's ME, the following conditions shall be included in any site plan review or special permit granted under this Ordinance:

1. All conditions applicable to MMDs and MMMs under Section 181.646 of this Zoning Ordinance shall be applied to an ME, with the exceptions that
  - a. Any reference within Section 181.646 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME;
  - b. Hours of operation shall be set forth within the special permit, and shall generally be consistent with those for package stores licensed under G.L. c. 138.
  - c. The provisions regarding signage contained in Section 181.646(f) and (g) shall not be included; and
  - d. The provisions revoking a special permit for cultivation or dispensing of marijuana for non-medical purposes in Section 181.646(p) shall not be applicable.
2. All business signage shall be subject to the requirements to be promulgated by the CCC and the requirements of Section 181.53 of this Zoning Ordinance.
3. The ME shall not violate any provision of the Zoning Ordinance, including but not limited to Section 181.654 above.
4. Display of marijuana, Marijuana Products and Marijuana Accessories shall be limited to an area which is accessible only by persons aged twenty-one (21) years or older, and the applicant shall establish such controls and monitoring as are necessary to ensure that this area is not accessed by persons under the age of twenty-one (21) years.
5. The ME shall regularly verify to the City its efforts to ensure the health, safety, and well-being of the public, and to limit undue impacts on the natural environment, by the use of high efficiency equipment to limit energy and water usage demand, by the purchase of renewable energy credits, by the use of LED lighting equipment, by the prohibition or limitation of pesticides, insecticides and similar chemicals, and by any other methods designed to further this purpose.
6. ME shall be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located.



7. The applicant has entered into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.

**181.658 Termination and Modification**

181.6581 A special permit or site plan approval may be terminated due to violation of any of its conditions. In addition, a special permit or site plan approval shall terminate upon:

1. Failure of the permit holder to commence operations at the ME within twelve (12) months of the date of approval; or
2. Transfer of ownership of the ME without approval of the Planning Board. For these purposes, transfer of ownership shall include any reallocation of ownership or change in business structure which results in a change of its designated representatives or responsible individuals; or
3. Termination of the Host Community Agreement or failure to pay a host fee or Impact Fee under the Agreement to the City.

181.6582 A special permit or site plan approval may be modified by the Planning Board after public hearing. No modification is permitted for a change of location; a special permit holder must submit a new application for a change in location. Any changes in the application materials from the original materials must be submitted with a request for modification. No transfer of ownership, except a transfer to an affiliated entity, shall be permitted for two years after the date of approval of the special permit or site plan review unless required due to the death or disability of an owner. If the special permit holder requests approval of a transfer of ownership, then the holder must submit proof:

1. That the new owner will operate the ME in accordance with the terms of the special permit, as shown by evidence of Moral Character and other substantial evidence; and
2. That all amounts due under the Host Community Agreement have been timely paid and no taxes, fines, penalties, fees, or other charges due to the City are currently unpaid.

**181.659 Severability.** The provisions of this Ordinance are severable. If any provision, paragraph, sentence, or clause of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**(2) TO AMEND THE DEFINITIONS OF RMD, MMD AND MMM IN SECTION 181.10 TO REMOVE A REQUIREMENT THAT THE OPERATOR BE A NON-PROFIT ENTITY, AS FOLLOWS:**

**181.10 REGISTERED MARIJUANA DISPENSARY (RMD)** – Also known as a Medical Marijuana Treatment Center, is an establishment approved and licensed by the Massachusetts Department of Public Health (MDPH) pursuant to 105 CMR 725.000, owned and operated by an **entity** registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as marijuana-infused products (“MIPs”), tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A RMD shall not be eligible as a “non-exempt agricultural use” or as a “non-exempt educational use” and shall only be permitted as allowed in accordance with City of Fitchburg Zoning Ordinance. Further, the following definitions shall apply for the purposes of distinguishing the permitting and regulation of RMD dispensing uses from RMD cultivation uses within this Ordinance:

- a) Medical Marijuana Dispensary (MMD) facility – A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved **entity** which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered Qualifying Patients or their personal caregivers in accordance with the provisions of MDPH regulations 105 CMR 725.000.
- b) Medical Marijuana Manufacturing (MMM) facility – A Registered Marijuana Dispensary that is located off-site from the dispensing facility (and controlled and operated by the same registered and approved **entity** which operates an affiliated RMD) but which serves only to cultivate and process marijuana, and marijuana infused products in accordance with the provisions of MDPH regulations 105 CMR 725.000.

**(3) TO ADD THE FOLLOWING SECTION REGULATING SIGNS:**

Add 181.5364

181.5364 Signs for Marijuana Establishments

All signs for Marijuana Establishments shall be in conformity with the provisions of G.L. c. 94G and all applicable federal, state and local regulations, including regulations issued by the Cannabis Control Commission. Temporary and promotional signage for Marijuana Establishments are prohibited.

**TO AMEND THE REQUIREMENTS FOR SITE PLAN REVIEW BY AMENDING SECTION 181.9414 AS FOLLOWS:**

**181.9414. Siting, construction or expansion of a Registered Marijuana Dispensary (RMD) or Marijuana Establishment (ME).**

**TO AMEND THE TABLE OF PRINCIPAL USES BY ADDING SECTIONS 181.313D(15), (16) AND (17) and 181.313D(28) AS FOLLOWS:**

- D15. All Marijuana Establishments (ME), except for Marijuana Retailers (MR). Update chart with SP FOR LI, and I zones by Planning Board (N for all other zoning districts).
- D16. Marijuana Retailers (MR). Update chart with SP FOR MMOD (N for all other zoning districts).
- D17. Independent Testing Laboratory. Update chart with SP in the I, LI, CBD and C&A zoning districts (N for all other districts).
- C28. Marijuana Social Consumption Establishment, N for all zoning districts.

**TO AMEND THE PROHIBITED HOME OCCUPATIONS BY ADDING THE FOLLOWING TO SECTION 181.333**

**181.333 Prohibited Home Occupations:**

- Marijuana Establishment (ME) or similar facility
- Registered Marijuana Dispensary (RMD) or similar facility

*City of Fitchburg,* April 3, 2018

The Planning Board recommended the following Order be amended and be adopted as amended:

050-18. ORDERED THAT: The City of Fitchburg discontinue and abandon any and all public interests in a portion of Westminster Hill Road as outlined in the enclosed Order.  
(Reference Petition #114-17)

Reports of  
Committees  
Planning Board  
(cont)



**CITY OF FITCHBURG  
PLANNING BOARD**  
166 BOULDER DRIVE  
FITCHBURG, MASSACHUSETTS 01420

(978) 829-1891  
PHONE

(978) 829-1965  
FAX

**DATE:** March 20, 2018  
**TO:** City Council  
City Clerk  
**FROM:** Michael O'Hara  
Principal Planner *MO'Hara*  
**SUBJECT:** Order #050-2018  
Discontinue a portion of Westminster Hill Road

At its March 15, 2018 meeting the Fitchburg Planning Board voted unanimously to recommend in favor of this Order. The petition, submitted by the Planning Board, is intended to eliminate as a public way that portion of Westminster Hill Road abutting the "Game On" recreational facility currently under construction. The Board also voted unanimously to authorize me to send this memo on their behalf.

The road is a portion of Westminster Hill Road between City of Fitchburg street bounds #16 and #22, as shown on a plan titled:

*"Plan of Land in Fitchburg Massachusetts, Discontinuance of a Portion of Westminster Hill Road" prepared by Ducharme & Dills Civil Design Group, dated Nov. 27, 2017"*

The purpose of the discontinuance is so that future patrons of the Game On facility will be directed by GPS to access the site ONLY from the westerly (Industrial Road) approach.

cc: Law Dept.  
Planning Board

**City of Fitchburg**

In City Council, \_\_\_\_\_

FITCHBURG CITY CLERK  
2018 MAR 27 PM 4:19

ORDERED:- That

WHEREAS, in the opinion of the City Council of the City of Fitchburg common convenience and necessity require that a portion of Westminster Hill Road should be discontinued as a public street or way of the City, under the provisions of law so authorizing from a point more clearly described on the attached plan to another point more clearly described on the attached plan said plan entitled "Plan of Land Discontinuance of a portion of Westminster Hill Road between Points 16 - 22 " prepared for the City of Fitchburg on November 27, 2017 by Ducharme and Dillis, Civil Design Group Inc. filed at the Northern Worcester County Registry of Deeds and recorded at plan book 513, page 20. (The Plan);

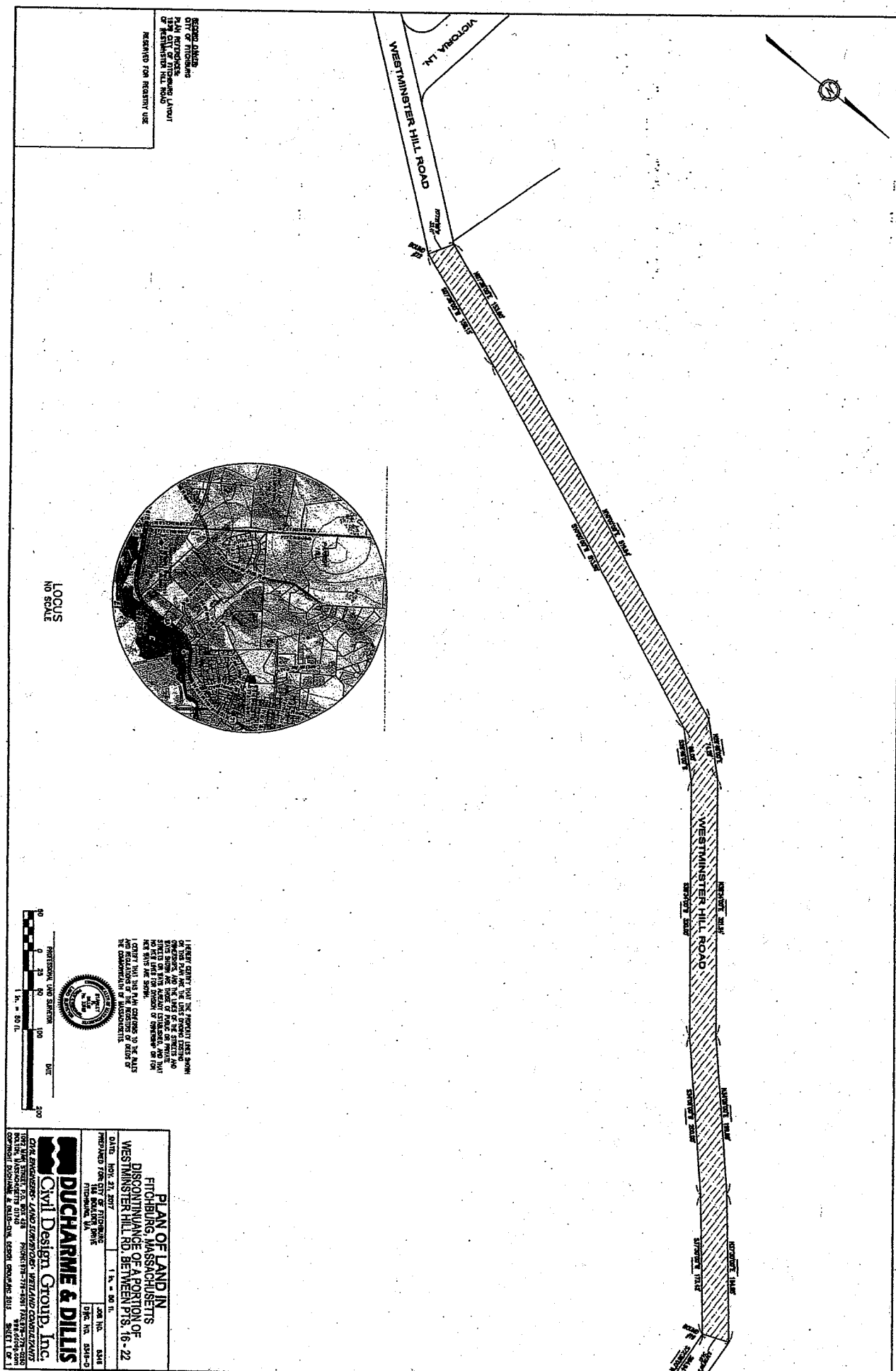
WHEREAS, the City Council duly referred this proposed discontinuance to the Planning Board which filed its report concurring in the discontinuance of Westminster Hill Road as aforesaid; and

WHEREAS, a public meeting, in the manner prescribed by law, has been duly held in connection with the proposed discontinuance of this street.

IT IS HEREBY ORDERED, that a portion of Westminster Hill Road be, and it hereby is, discontinued as a public way and street of the City of Fitchburg, under the provisions of law and according to the Plan and said Plan will be recorded in the Office of the City Clerk.

IT IS FURTHER ORDERED, that common convenience and necessity require that the City of Fitchburg discontinue and abandon any and all public interests and rights in the portion of Westminster Hill Road as above described.

IT IS FINALLY ORDERED, as a further condition and part of this Order is that, upon the abandonment and discontinuance herein, the abutting owners to the mid-line of said abandoned area shall henceforth be referred to the Board of Assessors for assessment purposes.



Report accepted. Order adopted as amended by unanimous vote.  
11 members present. Board consists of 11 members.  
Order signed by the Mayor April 5, 2018.

Reports of  
Committees  
Public Works C  
Committee

**Public Works Committee**  
**Meeting of March 27, 2018**

The Public Works Committee recommended the following Petition be granted:

243-17. Councillor Paul Beauchemin, on behalf of Norman Beauvais, to request a sidewalk in front of the Dunkin Donuts located on Electric Avenue.

Report read and accepted. Petition granted by unanimous vote. 11 members present. Board consists of 11 members.

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The Public Works Committee recommended the following Petition be given leave to withdraw:

300-17. Councillor Marcus DiNatale, Councillor Paul Beauchemin, and Lisa Hebert, to install a berm at 47 Elmwood Avenue.

Report read and accepted. Petition given leave to withdraw by unanimous vote. 11 members present. Board consists of 11 members.

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The Public Works Committee recommended the following Petition be held in Committee:

038-18. Councillor Paul Beauchemin and City Solicitor Vincent Pusateri petitions the Council to ensure that property located at 150 Legros Street be provided access via public ways. The City will be required to cause a survey, obtain an appraisal, and perform a taking by eminent domain in order to correct the problem.

Report read and accepted. Petition held in Committee by unanimous vote. 11 members present. Board consists of 11 members.

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The Public Works Committee recommended the following Petition be given leave to withdraw:

040-18. Councillor Marcus DiNatale and Miriam Ruiz Gonzalez, to install new fencing at the Boylston Street Playground.

Report read and accepted. Petition given leave to withdraw by unanimous vote. 11 members present. Board consists of 11 members.

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The Public Works Committee recommended the following Petition be granted:

041-18. Councillor Michael Kushmerek and Ms. Sharon Bernard, to repair the handicap accessible ramp located at the crosswalk immediately in front of the library. The ramp and adjoining curb are uneven, causing pooling and hazardous ice buildup.

Report read and accepted. Petition granted by unanimous vote. 11 members present. Board consists of 11 members.

The Public Works Committee recommended the following Petition be held in Committee:

- 048-18. Councilors Elizabeth Walsh and Marcus DiNatale, along with resident Mary Fritz, to erect jersey barriers at the corner of 400 Rollstone Road (intersection of Rollstone road and Brittany Lane) to mitigate frequent motor vehicle accidents occurring on this resident's property. Existing boulders placed there previously are not effectively mitigating encroachment.

Report read and accepted. Petition held in Committee by unanimous vote. 11 members present. Board consists of 11 members.

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The Public Works Committee recommended the following Petitions be granted:

- 049-18. Evan Corrigan, to request that a section of Water Street be repaved.
- 070-18. Councillor Marcus DiNatale and resident Lorelei McClure to re-pave the portion of Rindge Road just after McKay Elementary School. This stretch of roadway is a critical pathway for parents, faculty, and university students to and from both McKay and the University.
- 071-18. Councillor Elizabeth Walsh and John Carbone, to address drainage problem at 33 Damon Road that is creating a road hazard.

Report read and accepted. Petitions granted by unanimous vote. 11 members present. Board consists of 11 members.

-----  
The Public Works Committee recommended the following Petition be given leave to withdraw:

- 072-18. Councillor Elizabeth Walsh and Sam Erhagbai to address drainage problem at 96 Lancaster Ave. Each time it rains, water runs into the driveway and results in standing water in his garage.

Report read and accepted. Petition given leave to withdraw by unanimous vote. 11 members present. Board consists of 11 members.

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Reports of  
Committees  
Public Works  
Committee (cont)

The Public Works Committee recommended the following Petition be **Amended** to read: "Councillor Elizabeth Walsh to address drainage problem at 264 Boutelle St. Install a berm along the East side of Boutelle St. in front of 264 Boutelle St. and pave the sidewalk" and grant as amended:

073-18. Councillor Elizabeth Walsh, to address drainage problem at 264 Boutelle St., install a berm along the East side at Boutelle St. from Harvard St. to St. Bernard St., and pave the sidewalk.

Report read and accepted. Petition **Amended** to read: "Councillor Elizabeth Walsh to address drainage problem at 264 Boutelle St. Install a berm along the East side of Boutelle St. in front of 264 Boutelle St. and pave the sidewalk" and granted as amended by unanimous vote. 11 members present. Board consists of 11 members.

Public Hearing  
Ordinance #31-2018

#### PUBLIC HEARINGS

031-18. AN ORDINANCE:

1. To add a new section 181.65, Marijuana Establishments, to regulate non-medical marijuana as outlined in the enclosed Ordinance.
2. To amend the definitions of RMD, MMD and MMM in Section 181.10 to remove a requirement that the operator be a non-profit entity as follows.
3. To add the following Section Regulating signs.
4. to amend the requirements for site plan review by amending Section 181.9414 as follows.
5. To amend the prohibited home occupations by adding the following to Section 181.333 (Prohibited Home Occupations)

Be it ordained by the City Council of the City of Fitchburg, as follows:

#### Section 181.65 - MARIJUANA ESTABLISHMENTS

**181.651 Regulation.** G.L. c. 94G authorizes a system of state licensing for businesses engaging in the cultivation, testing, processing and manufacturing, and retail sales of non-medical marijuana, collectively referred to as Marijuana Establishments (MEs). G.L. c. 94G §3 allows cities to adopt ordinances that impose reasonable safeguards on the operation of non-medical marijuana establishments, provided they are not unreasonably impracticable and are not in conflict with the law. The special permit and site plan review requirements set forth in this Section shall be in addition to, and not in lieu of, any other licensing and permitting requirements imposed by any other federal, state, or local law.

**181.652 Purpose.** The purpose of this ordinance is to allow state-licensed MEs to exist in the City of Fitchburg in accordance with applicable state laws and regulations and impose reasonable safeguards to govern the time, place and manner of ME operations and any business dealing in Marijuana Accessories in such a way as to ensure public health, safety, well-being, and reduce undue impacts on the natural environment as it relates to cultivation, processing and manufacturing subject to the provisions of this Zoning Ordinance, M.G.L. c. 40A, M.G.L. c. 94G and any other applicable law. Therefore, this ordinance may permit MEs in locations suitable for lawful MEs where there is access to regional roadways, where they may be readily monitored by law enforcement for health and public safety purposes, and to minimize adverse impacts on adjacent properties, residential neighborhoods, historic districts, schools, playgrounds and other locations where minors congregate by regulating the siting, design, placement, operation security, and removal of MEs.

This Section is intended to coexist with the existing Section 181.64 regarding MMDs and MMMs.

**181.653 Definitions.** Where not expressly defined in the Zoning Ordinance, terms used in this Zoning Ordinance referring to non-medical use marijuana shall be interpreted as defined in G.L. c. 94G, as the same may be amended from time to time, and regulations issued by the Cannabis Control Commission (CCC). The following definitions, consistent with this expressed intent, shall apply in the interpretation and enforcement of this section:

1. "Marijuana Products", products that have been manufactured and contain marijuana or an extract from marijuana, including concentrated forms of marijuana and products composed of marijuana and other ingredients that are intended for non-medical use or consumption, including edible products, beverages, topical products, ointments, oils and tinctures.
2. "Marijuana Establishment" (ME), a Marijuana Cultivator, Independent testing laboratory, Marijuana Product Manufacturer, Marijuana Retailer or any other type of licensed non-medical marijuana-related business.

3. "Marijuana Cultivator" (MC), an entity licensed to cultivate, process and package non-medical marijuana, to deliver non-medical marijuana to ME's and to transfer marijuana to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MC.
4. "Marijuana Product Manufacturer" (MPM), an entity licensed to obtain, manufacture, process and package non-medical marijuana and marijuana products, to deliver non-medical marijuana and marijuana products to ME's and to transfer non-medical marijuana and marijuana products to other ME's, but not to consumers. A Craft Marijuana Cultivator Cooperative performing a similar function shall be included within the definition of a MPM.
5. "Marijuana Retailer" (MR), an entity licensed to purchase and deliver non-medical marijuana and marijuana products from ME's and to deliver, sell or otherwise transfer non-medical marijuana and marijuana products to ME's and to consumers.
6. "Independent testing laboratory", a laboratory that is licensed by the CCC and is:
  - (i) accredited to the most current International Organization for Standardization 17025 by a third-party accrediting body that is a signatory to the International Laboratory Accreditation Cooperation mutual recognition arrangement or that is otherwise approved by the CCC; (ii) independent financially from any medical marijuana treatment center or any licensee or ME for which it conducts a test; and (iii) qualified to test marijuana in compliance with regulations promulgated by the CCC pursuant to G.L. c. 94G.
7. "Experienced Operator," any MMD or MMM facilities, as defined by Section 181.64 of the Zoning Ordinance, having already received a special permit and site plan review approval by the City, prior to the passage of Section 181.65 of this Ordinance, which remain in good standing without violation of any ordinance, statute, or condition of their special permit.
8. "Moral Character" means the degree to which a person's history demonstrates honesty, fairness and respect for the rights of others and for conformance to the law, which may include consideration of whether an individual has:
  - a. Ever had a professional license denied, suspended or revoked;
  - b. Ever had a business license denied, suspended or revoked;
  - c. Ever had a marijuana-related business license denied, suspended, revoked, or placed on administrative hold, or was subjected to a fine for violation of a marijuana-related zoning ordinance;
  - d. Ever had a business temporarily or permanently closed for failure to comply with any tax, health, building, fire, zoning or safety law;
  - e. Ever had an administrative, civil or criminal finding of delinquency for failure to file or failure to pay employment, sales, property or use taxes;
  - f. Ever been convicted of a felony, sex offense, or other offense involving violence, distribution of controlled substances, excluding marijuana-related possession offenses, or other moral turpitude;
  - g. Within the previous sixty months been convicted of a misdemeanor or other offense involving the distribution of controlled substances, or driving under the influence of alcohol or other substance (DUI, OUI) convictions

**181.654 Prohibitions and Limitations.**

181.6541 It shall be unlawful for any person to operate a ME without obtaining a special permit and undergoing site plan approval pursuant to the requirements of this Ordinance, except as provided for an Experienced Operator.

181.6542 An Experienced Operator may operate a ME of the same type as the medical marijuana facility for which they have been granted a special permit and approved site plan review by the City without obtaining a new special permit, provided that the Experienced Operator must receive site plan approval for the new use as a ME, that the ME is located in the same facility for which the Experienced Operator received the prior special permit and site plan approval, and that the gross square footage of such facility is not increased by more than ten (10%) percent.

181.6543 A separate special permit is required for each different ME detailed in section 181.653, above, or in the case of an Experienced Operator, a separate site plan review.

181.6544 As defined in G.L. c. 94G, and as established in Section \_\_\_\_\_ of the Fitchburg City Code, the number of MRs shall be limited to no more than 20% of the number of licenses issued within the city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under G.L. c. 138, §15. No special permit may be granted for a MR which results in a violation of this limit.

181.6545 A ME may only be involved in the use permitted by its definition. MRs may only be located in buildings containing other retail, commercial, residential, industrial, or any other uses, including other types of MEs, if the MR is separated by full walls from any and all other uses.

181.6546 MRs may be permitted under special permit by the Planning Board in the MMOD District. Independent Testing Facilities may be permitted under special permit by the Planning Board in the Industrial (I), Light Industrial (LI), Central Business (CBD) and Commercial & Automotive (C&A) Zoning Districts. On-site or social consumption, so called, is prohibited as a use. All other MEs may be permitted under special permit by the Planning Board in the Industrial and Light Industrial Zoning Districts.

181.6547 MEs shall be prohibited as an Accessory Use or Home Occupation in all zoning districts. No ME shall be permitted to have drive-up or walk-up facilities as described in Section 181.3246 of this Zoning Ordinance.

181.6548 No marijuana or Marijuana Product shall be smoked, eaten, ingested, consumed or otherwise used within the premises of any ME.

181.6549 No ME may be operated in a mobile facility or outside of a fully enclosed building or structure, excepting deliveries to off-site MRs and home deliveries to consumers permitted or licensed by applicable state and local regulations.

181.65410 No ME may be operated in such a manner as to cause or create a public nuisance to abutters or to the surrounding area, or which creates any hazard, including but not limited to, fire, explosion, fumes, gas, smoke, odors, obnoxious dust, vapors, offensive noise or vibration, flashes, glare, objectionable effluent or electrical interference, which may impair the normal use and peaceful enjoyment of any property, structure or dwelling in the area.

181.65411 The issuance of a special permit and site plan review pursuant to this chapter does not create an exception, defense, or immunity to any person or entity in regard to any potential criminal liability the person or entity may have for the production, distribution, or possession of marijuana.

**181.655 Application.** In addition to the materials required under Section 181.93 (Special Permits) and Section 181.94 (Site Plan Review) of this Ordinance, the applicant shall submit the following:

1. All materials required under Section 181.645 of this Zoning Ordinance for an MMD or MMM facility, with the exceptions that any reference within Section 181.645 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME.
2. Proof of approval from the Commonwealth of Massachusetts for the proposed ME by submitting copies of all required registrations, licenses and permits issued to the applicant by the state and any of its agencies for the proposed ME.
3. The name, address, email address, and phone number of all designated Managers of the ME, together with a criminal background check of such Managers and other evidence of Moral Character.
4. Proof that the detailed security plan, operation and management plan, and emergency response plans have been submitted to the Fitchburg Police Department and the Department of Planning and Community Development for comment and review at the same time or prior to the submission of the application, and any comment or response received by the applicant.
5. Proof that the applicant provided notification in writing at the same time or prior to the submission of the application to all property owners and operators of the uses listed under 181.656(5) within three hundred (300) feet of its proposed location and use, to provide them with the opportunity to comment to the Planning Board, as well as any and all comment or response received by the applicant.
6. Evidence demonstrating that the ME will be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located. This may include but shall not be limited to evidence of Moral Character.

181.6551 Upon receipt of a completed application, the Planning Board shall refer copies of the application to the Building Department, Fire Department, Police Department, City Council, Board of Health, Conservation Commission, and the Engineering Division of the Department of Public Works. These boards/departments shall review the application and shall submit their written recommendations. Failure to make recommendations within 60 days of referral of the application shall be deemed lack of opposition.

181.6552 After notice and public hearing and consideration of application materials, consultant reviews, public comments, and the recommendations of other municipal boards and departments, the Planning Board may act upon the application for special permit and approval of site plan.

181.6553 In instances where any portion of a project involves a special permit application to or site plan review by the Planning Board for any ME, the Planning Board shall

serve as the special permit granting authority for all other special permits required in connection with such project.

**181.656 Special Permit Criteria and Findings**

A MR, MC, MPM or Independent Testing Facility may be permitted pursuant to a Special Permit and Site Plan Review granted by the Planning Board. In granting a special permit for a MR, MC, MPM or Independent Testing Facility, in addition to the general criteria for a special permit in Section 181.93 of the Zoning Ordinance, the Planning Board must also make the following findings:

1. If the special permit is for a MR, that the MR is located in the MMDO; or if the special permit is for an Independent Testing Facility, that the Independent Testing Facility is located in the Industrial (I), Light Industrial (LI), Central Business (CBD) and Commercial & Automotive (C&A) Zoning District; or if the special permit is for any other ME, that the ME is located in the Industrial or Light Industrial zoning districts in accordance with 181.313 of the Table of Principle Uses.
2. The applicant has demonstrated that the ME has or will meet all of the permitting requirements of all applicable agencies within the Commonwealth and is or will be in compliance with all applicable state laws and regulations, including, but not limited to G.L. c. 94G, §12 General Marijuana Establishment Operation.
3. The applicant has entered into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.
4. The grant of the special permit will not exceed the limitation on permitted MRs set forth in Section 181.6544.
5. The ME is located at least three hundred (300) feet distant of a pre-existing public or private school providing education in kindergarten or any of grades 1 through 12, a vocational school, a public or private college, junior college, university or dormitory, a licensed child care facility, a library, a playground, a public park, a youth center, a public swimming pool, a video arcade facility, any facility in which minors commonly congregate, or any residence, including commercial residences such as hotels, motels, lodging houses, etc. The distance under this section is measured in a straight line from the nearest point of the property line of the protected uses to the nearest point of the structure of the proposed ME.
  - a. The distance requirement may be reduced by the Planning Board provided that the ME will employ adequate measures to prevent product diversion to minors, and the Planning Board determines that a shorter distance, adequately buffered, will suffice to accomplish the objectives set forth under 181.65
6. The applicant has satisfied all of the conditions and requirements of this section and other applicable sections of the Zoning Ordinance and any applicable city ordinances.
7. The facility provides adequate security measures to ensure that there are not direct threats to the health or safety of employees, staff, or members of the public and that storage and location of cultivation is adequately secured.
8. The facility meets all criteria required for a Special Permit for an MMD or MMM under Section 181.645 of this Zoning Ordinance, with the exceptions that

- a. Any reference within Section 181.645 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME; and
  - b. Location in an area which does not have reasonable access to medical marijuana pursuant to Section 181.644(a) shall not be required.
9. The applicant has demonstrated, by substantial evidence of Moral Character and other evidence, that it will operate the ME in conformity with all applicable municipal ordinances, state laws and regulations and that its policies and procedures are designed to prevent violation of such laws, particularly including but not limited to Section 181.654 above.

**181.657 Site Plan Review/Special Permit Conditions**

The Planning Board shall conduct site plan review and shall impose conditions reasonably appropriate to improve site design, traffic flow, public safety, protect water quality, air quality, and significant environmental resources, preserve the character of the surrounding area and otherwise serve the purpose of this section. In addition to any specific conditions applicable to the applicant's ME, the following conditions shall be included in any site plan review or special permit granted under this Ordinance:

1. All conditions applicable to MMDs and MMMs under Section 181.646 of this Zoning Ordinance shall be applied to an ME, with the exceptions that
  - a. Any reference within Section 181.646 to the Department of Public Health or regulations issued thereby shall be interpreted to refer to the CCC and its regulations, or any other state regulation or statute applicable to the ME;
  - b. Hours of operation shall be set forth within the special permit, and shall generally be consistent with those for package stores licensed under G.L. c. 138.
  - c. The provisions regarding signage contained in Section 181.646(f) and (g) shall not be included; and
  - d. The provisions revoking a special permit for cultivation or dispensing of marijuana for non-medical purposes in Section 181.646(p) shall not be applicable.
2. All business signage shall be subject to the requirements to be promulgated by the CCC and the requirements of Section 181.53 of this Zoning Ordinance.
3. The ME shall not violate any provision of the Zoning Ordinance, including but not limited to Section 181.654 above.
4. Display of marijuana, Marijuana Products and Marijuana Accessories shall be limited to an area which is accessible only by persons aged twenty-one (21) years or older, and the applicant shall establish such controls and monitoring as are necessary to ensure that this area is not accessed by persons under the age of twenty-one (21) years.
5. The ME shall regularly verify to the City its efforts to ensure the health, safety, and well-being of the public, and to limit undue impacts on the natural environment, by the use of high efficiency equipment to limit energy and water usage demand, by the purchase of renewable energy credits, by the use of LED lighting equipment, by the prohibition or limitation of pesticides, insecticides and similar chemicals, and by any other methods designed to further this purpose.
6. ME shall be operated in a responsible manner that does not materially adversely affect the public health, safety or the general welfare of the City or the immediate neighborhood where the ME is located.

7. The applicant has entered into an approved Host Community Agreement under which the applicant pays a host fee or Impact Fee to the City with the Mayor of the City of Fitchburg.

**181.658 Termination and Modification**

181.6581 A special permit or site plan approval may be terminated due to violation of any of its conditions. In addition, a special permit or site plan approval shall terminate upon:

1. Failure of the permit holder to commence operations at the ME within twelve (12) months of the date of approval; or
2. Transfer of ownership of the ME without approval of the Planning Board. For these purposes, transfer of ownership shall include any reallocation of ownership or change in business structure which results in a change of its designated representatives or responsible individuals; or
3. Termination of the Host Community Agreement or failure to pay a host fee or Impact Fee under the Agreement to the City.

181.6582 A special permit or site plan approval may be modified by the Planning Board after public hearing. No modification is permitted for a change of location; a special permit holder must submit a new application for a change in location. Any changes in the application materials from the original materials must be submitted with a request for modification. No transfer of ownership, except a transfer to an affiliated entity, shall be permitted for two years after the date of approval of the special permit or site plan review unless required due to the death or disability of an owner. If the special permit holder requests approval of a transfer of ownership, then the holder must submit proof:

1. That the new owner will operate the ME in accordance with the terms of the special permit, as shown by evidence of Moral Character and other substantial evidence; and
2. That all amounts due under the Host Community Agreement have been timely paid and no taxes, fines, penalties, fees, or other charges due to the City are currently unpaid.

**181.659 Severability.** The provisions of this Ordinance are severable. If any provision, paragraph, sentence, or clause of this Ordinance or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this Ordinance.

**(2) TO AMEND THE DEFINITIONS OF RMD, MMD AND MMM IN SECTION 181.10 TO REMOVE A REQUIREMENT THAT THE OPERATOR BE A NON-PROFIT ENTITY, AS FOLLOWS:**

**181.10 REGISTERED MARIJUANA DISPENSARY (RMD)** – Also known as a Medical Marijuana Treatment Center, is an establishment approved and licensed by the Massachusetts Department of Public Health (MDPH) pursuant to 105 CMR 725.000, owned and operated by an **entity** registered under 105 CMR 725.100, that acquires, cultivates, possesses, processes (including development of related products such as marijuana-infused products (“MIPs”), tinctures, aerosols, oils, or ointments), transfers, transports, sells, distributes, dispenses, or administers marijuana, products containing marijuana, related supplies, or educational materials to registered qualifying patients or their personal caregivers. A RMD shall not be eligible as a “non-exempt agricultural use” or as a “non-exempt educational use” and shall only be permitted as allowed in accordance with City of Fitchburg Zoning Ordinance. Further, the following definitions shall apply for the purposes of distinguishing the permitting and regulation of RMD dispensing uses from RMD cultivation uses within this Ordinance:

- a) Medical Marijuana Dispensary (MMD) facility – A Registered Marijuana Dispensary that is located off-site from the cultivation/processing facility (and controlled and operated by the same registered and approved **entity** which operates an affiliated RMD) but which serves only to dispense the processed marijuana, related supplies and educational materials to registered Qualifying Patients or their personal caregivers in accordance with the provisions of MDPH regulations 105 CMR 725.000.
- b) Medical Marijuana Manufacturing (MMM) facility – A Registered Marijuana Dispensary that is located off-site from the dispensing facility (and controlled and operated by the same registered and approved **entity** which operates an affiliated RMD) but which serves only to cultivate and process marijuana, and marijuana infused products in accordance with the provisions of MDPH regulations 105 CMR 725.000.

**(3) TO ADD THE FOLLOWING SECTION REGULATING SIGNS:**

Add 181.5364

181.5364 Signs for Marijuana Establishments

All signs for Marijuana Establishments shall be in conformity with the provisions of G.L. c. 94G and all applicable federal, state and local regulations, including regulations issued by the Cannabis Control Commission. Temporary and promotional signage for Marijuana Establishments are prohibited.



**(4) TO AMEND THE REQUIREMENTS FOR SITE PLAN REVIEW BY AMENDING SECTION 181.9414 AS FOLLOWS:**

181.9414. Siting, construction or expansion of a Registered Marijuana Dispensary (RMD) or Marijuana Establishment (ME).

TO AMEND THE TABLE OF PRINCIPAL USES BY ADDING SECTIONS 181.313D(15), (16) AND (17) and 181.313D(28) AS FOLLOWS:

- D15. All Marijuana Establishments (ME), except for Marijuana Retailers (MR). Update chart with SP FOR LI, and I zones by Planning Board (N for all other zoning districts).
- D16. Marijuana Retailers (MR). Update chart with SP FOR MMOD (N for all other zoning districts).
- D17. Independent Testing Laboratory. Update chart with SP in the I, LI, CBD and C&A zoning districts (N for all other districts).
- C28. Marijuana Social Consumption Establishment, N for all zoning districts.

**(5) TO AMEND THE PROHIBITED HOME OCCUPATIONS BY ADDING THE FOLLOWING TO SECTION 181.333:**

181.333 Prohibited Home Occupations:

- Marijuana Establishment (ME) or similar facility
- Registered Marijuana Dispensary (RMD) or similar facility

Hearing held. Present for discussion were Ms. Paula Caron, Planning Board Chair, Ms. O'Kane and Mr. Hurley, Planning Board members, Mike O'Hara, Principle Planner. President Kushmerek opened the floor to comments from the public. One individual rose to speak: Mr. Paul DiGeronimo, Whalon Street/ South Street area business and building owner. Mr. DiGeronimo spoke concerning one proposed area recommended by the Planning Board to allow marijuana retail - the South Street area. He stated that Fitchburg will see clustering of establishments near Route 2 and, in order to avoid that, urged the council to require one mile between establishments. He stated the South Street area is a business area vital to Fitchburg in need of additional investments. He stated that he fears new establishments may not want to invest in close proximity to a cluster of marijuana retail establishments.

Hearing was closed and the matter was placed before the Council for discussion.

Various comments were made by Councillors and questions posed to the Planning Board. Opinions were expressed pro and con the Planning Board recommendations. Discussion included clarifying the areas that establishments would be allowed, business opportunities being thwarted by certain provisions of the proposed amendments, the need to develop viable businesses, public safety considerations as they relate to allowable locations.

Motion made and seconded as follows: to adopt the Planning Board recommendations with the exception of expanding the allowable area to all commercial and industrial zones excluding Main Street and the Central Business District, to include additional points of clarification to certain sections as determined by the City Solicitor's office and to insert express Special Permit conditions pertaining to public safety such as lighting, visibility and site plan issues.

Motion passed by vote of 10 in favor and 1 opposed (Beauchemin) President Kushmerek announced that the Ordinance is not being advanced to a first reading tonight. Instead, the City Solicitor will review the recommendations made for amendment to the Planning Board recommendations and incorporate them in to an amended version of the Ordinance. This amended Ordinance will be placed before the Council at a later date for review and vote.

Public Hearing  
Petition #74-2018

074-18. Lighttower Fiber Networks, to place and maintain approx. 700 feet of underground micro conduit from telephone pole #5542 River Road to 22 Kimball Pl. in accordance with that attached plan.



FITCHBURG CITY CLERK

2018 MAR -5 AM 11:30

March 5, 2017

To: The City Council  
City of Fitchburg, Massachusetts

**Lighttower Fiber Networks, LLC, Petition for Underground Conduit Placement**

Dear City Council:

Lighttower Fiber Networks, LLC requests permission to place and maintain underground micro conduit and fiber optic cable place therein at the public ways listed below:

**Install approximately 700 feet (1) 3/4" Communication Micro Conduit from Telephone pole #5542 River road to 22 Kimball Pl. in accordance with the attached plan labeled "Proposed Conduit Installation at 22 River Rd in Fitchburg, MA". Please note that this installation would take place behind the sidewalk and not physically on River Rd.**

Please refer to the attached plans for approximate trench locations and utility details. If you have any questions or concerns, please contact me at the numbers below.

Sincerely,

*Steve Crescimanno*

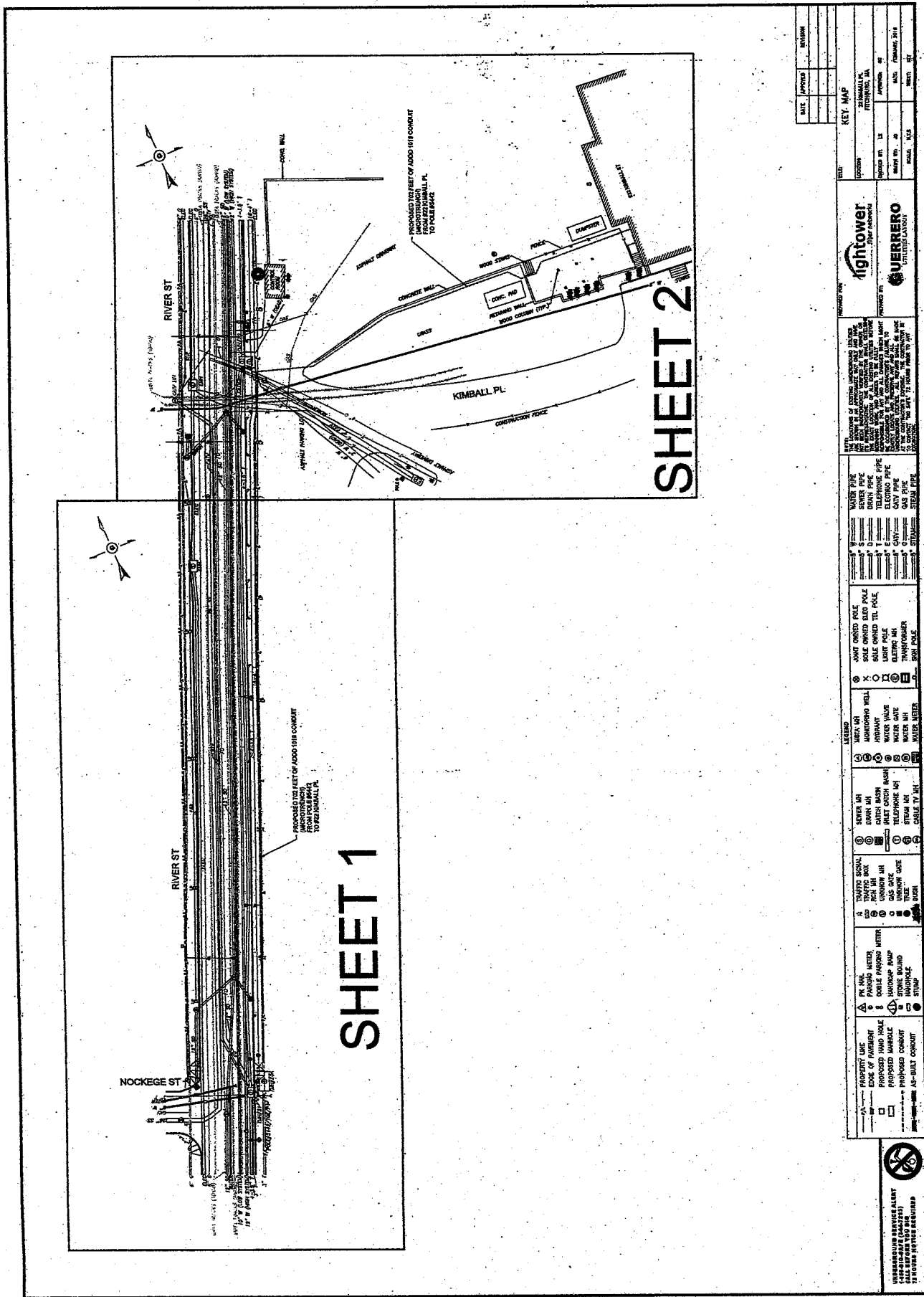
Steve Crescimanno  
Fiber Construction Engineer  
Office: 508-616-7865  
Mobile: 860-576-0742  
[screscimanno@lighttower.com](mailto:screscimanno@lighttower.com)

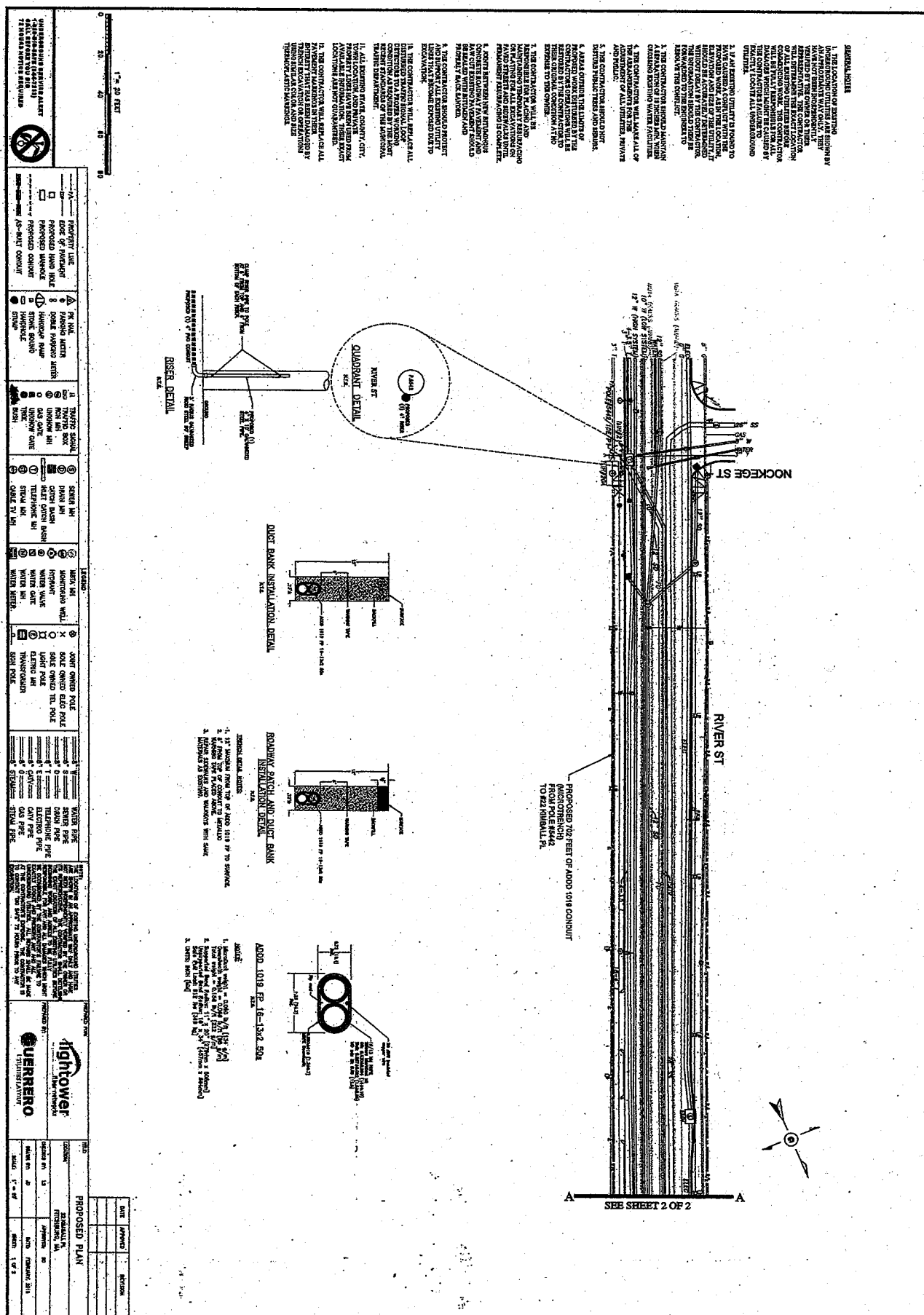


PROPOSED CONDUIT INSTALLATION  
AT  
22 KIMBALL PL  
IN  
FITCHBURG, MA

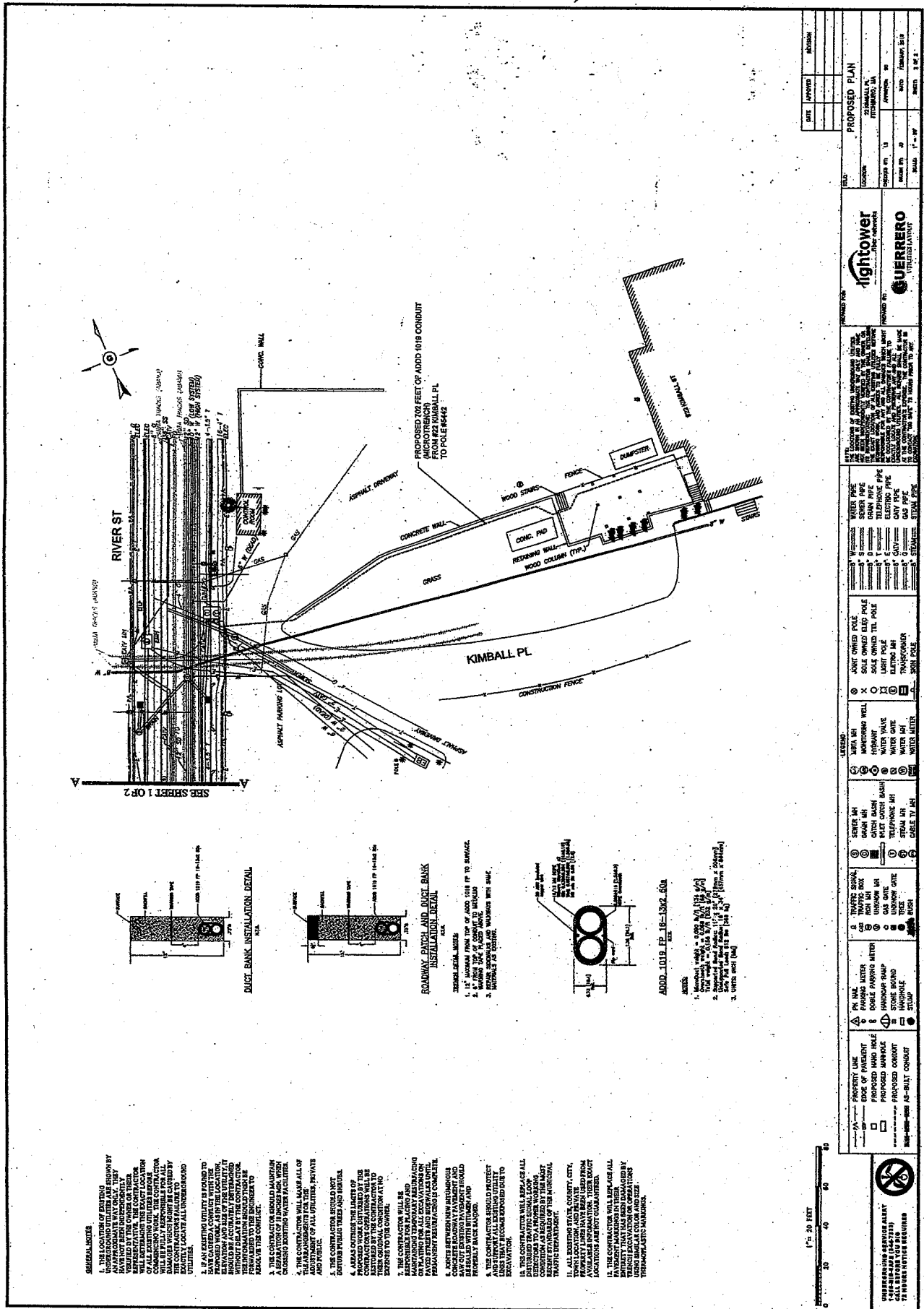
INDEX OF DRAWING		
SHT NO.	DESCRIPTION	
KEY	KEY MAP	
01-02	PROPOSED PLAN	

Public Hearing  
Petition #74-2018





Public Hearing  
Petition #74-2018



Representative from Lighttower Fiber Networks was present. No one spoke in favor of or in opposition to the petition. Hearing closed and petition granted by unanimous vote. 11 members present. Board consists of 11 members.

City of Fitchburg, April 3, 2018

Public Hearing  
Petition #75-2018

075-18. Comcast of Massachusetts III, Inc., to request a hearing for a grant of location, to install a new conduit system to provide service to 175 Old Princeton Road.



FITCHBURG CITY CLERK

2018 MAR -1 PM 2:09

March 1, 2018

Ms. Anna M. Farrell  
City Clerk  
City of Fitchburg  
City Hall  
166 Boulder Drive  
Fitchburg, MA 01420

RE: 175 Old Princeton Road  
Fitchburg, MA

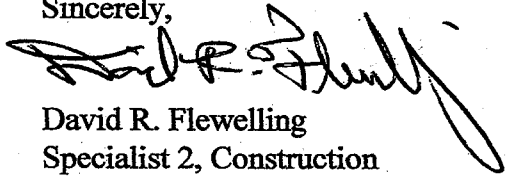
Dear Ms. Farrell:

Comcast of Massachusetts III, Inc. would like to request a hearing with the Fitchburg City Council for a grant of location. The purpose of the grant of location request is to install a new conduit system to provide service to 175 Old Princeton Road.

**Old Princeton Road:** Starting at the existing Utility Pole No. 6/8291. Excavating to install (2) 3" PVC Conduits 101' ± to the Unifit Property line and then continuing on to private property. For the purpose of providing Comcast Service to the Unifit Power Substation.

Please feel free to call me with any questions; I can be reached at 617-279-7864.

Sincerely,

  
David R. Flewelling  
Specialist 2, Construction

Enclosure (3)



Public Hearing  
Petition #75-2018

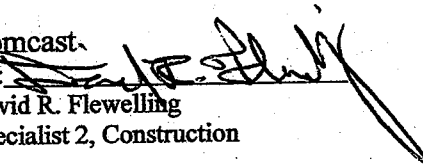
## PETITION OF COMCAST FOR LOCACTION FOR CONDUITS AND MANHOLES

To the City Council for the City of Fitchburg, Massachusetts:

Respectfully represents Comcast of Massachusetts III, Inc., a company incorporated for the distribution of telecommunications services, that it desires to construct a line for such telecommunications under the public way or ways hereinafter specified.

**Old Princeton Road:** Starting at the existing Utility Pole No. 6/8291. Excavating to install (2) 3" PVC Conduits 101' ± to the Unutil Property line and then continuing on to private property. For the purpose of providing Comcast Service to the Unutil Power Substation.

Wherefore, your petition prays that, after due notice and hearing as provided by law, the City Council may by Order grant your petitioner permission to construct, and a location for, such a line of conduits and manholes with the necessary wires and cables therein, said conduits and manholes to be located, substantially as shown on the plan made by Comcast of Massachusetts III Inc. dated, March 1, 2018 and filed here with, under the following public way or ways of said City of Fitchburg:

Comcast  
By:   
David R. Flewelling  
Specialist 2, Construction

Dated this March 1, 2018

City of Fitchburg Massachusetts

Received and filed \_\_\_\_\_, 2018

*City of Fitchburg,*

April 3, 2018

Public Hearing  
Petition #75-2018

ORDER FOR CONDUIT LOCATION

In the City Council for the City of Fitchburg, Massachusetts.

ORDERED:

That permission be and hereby is granted to Comcast of Massachusetts III, Inc., to lay and maintain underground conduits and manholes, with the wires and cables to be placed therein, under the surface of the following public way or ways as requested in petition of said Company dated March 1, 2018

**Old Princeton Road:** Starting at the existing Utility Pole No. 6/8291. Excavating to install (2) 3" PVC Conduits 101' ± to the Unitil Property line and then continuing on to private property. For the purpose of providing Comcast Service to the Unitil Power Substation.

Substantially as shown on plan marked - Proposed Comcast Underground, filed with said petition.

Also that permission be and hereby is granted said Comcast to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

The foregoing permission is subject to the following conditions:

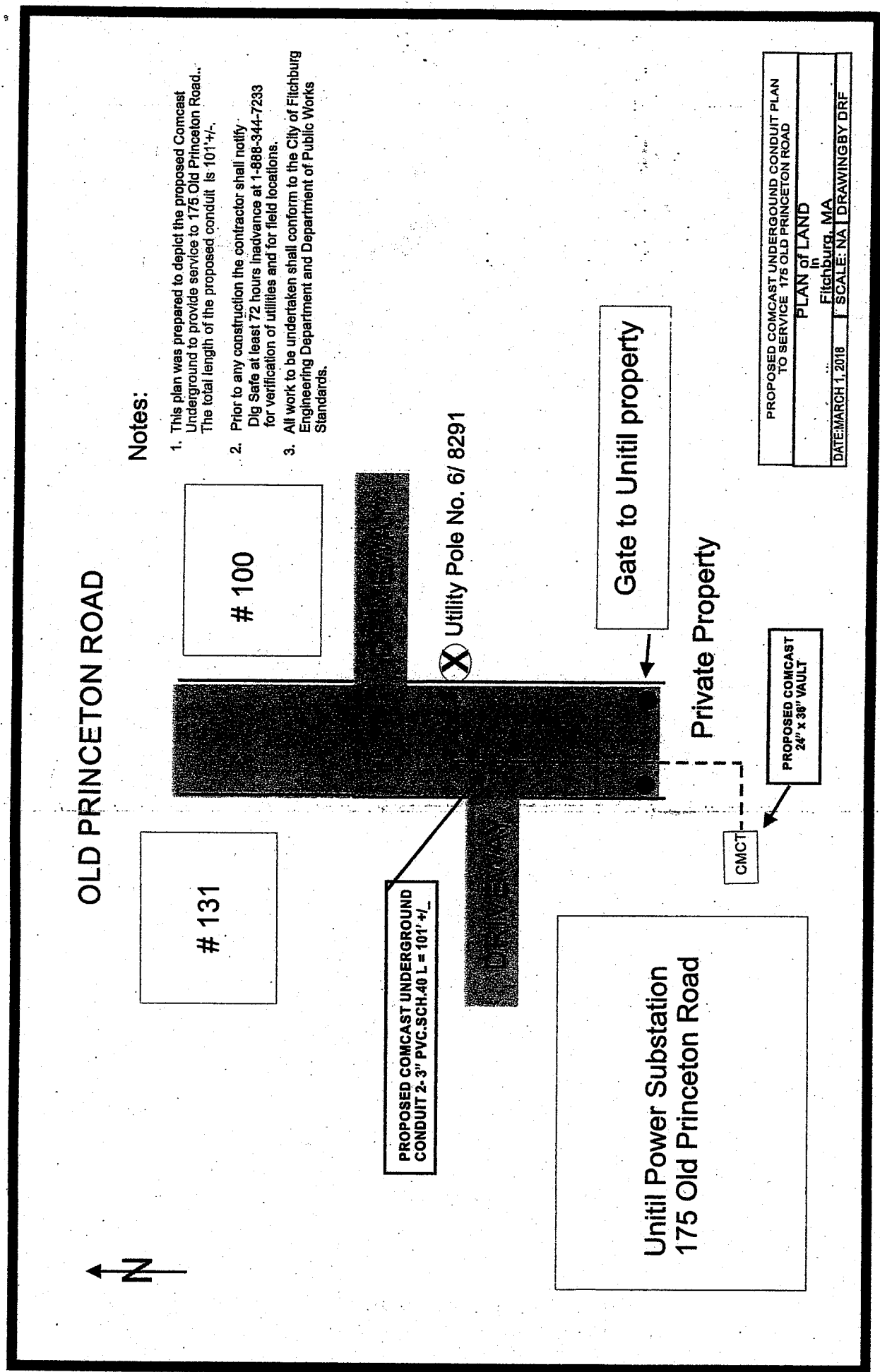
1. The conduits and manholes shall be of such materials and construction and all work done in such manner as to be satisfactory to the City Council or to such officers as it may appoint to the supervision of the work.
2. Said Company shall indemnify and save the City harmless against all damages, costs and expense whatsoever to which the City may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the City.
3. In addition said Company shall, before a public way is disturbed for the laying of its wire or conduits, execute its bond in a penal sum of One Hundred Thousand Dollars (\$100,000) (reference being had to the bond already on file with said City) conditioned for the faithful performance of its duties under this permit.
4. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

I hereby certify that the foregoing order was adopted at a meeting of the City Council for the City of Fitchburg, Massachusetts, held on the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

(over)

\_\_\_\_\_  
Town Clerk

Public Hearing  
Petition #75-2018



Dave Flewelling from Comcast was present. Mr. Flewelling confirmed that the company will be installing a second 3" conduit for future City use along with the requested installation of this petition. No one spoke in favor of or in opposition to the petition. Hearing closed and petition granted by unanimous vote. 11 members present. Board consists of 11 members.

**ORDERS-CDBG YEAR 44**

- 076-18. ORDERED THAT: The sum of FIVE THOUSAND DOLLARS (\$5,000) be appropriated, same to be credited to Fitchburg Sidewalk Accessibility Improvements and charged against the CDBG Year 44.
- 077-18. ORDERED THAT: The sum of FORTY-FIVE THOUSAND DOLLARS (\$45,000) be appropriated, same to be credited to the Goodrich Playground Project and charged against the CDBG Year 44.
- 078-18. ORDERED THAT: The sum of EIGHT THOUSAND DOLLARS (\$8,000) be appropriated, same to be credited to the Crocker Field Grandstand Wall Restoration project and charged against the CDBG Year 44.
- 079-18. ORDERED THAT: The sum of SEVENTY-FOUR THOUSAND FIVE HUNDRED TWENTY-SIX DOLLARS (\$74,526) be appropriated, same to be credited to the Streetscape Improvements project and charged against the CDBG Year 44.
- 080-18. ORDERED THAT: The sum of FOUR THOUSAND FOUR HUNDRED SEVENTY-FOUR DOLLARS (\$4,474) be appropriated, same to be credited to the Fitchburg Historical Society Handicapped Accessibility Improvements and charged against the CDBG Year 44.
- 081-18. ORDERED THAT: The sum of TWENTY-EIGHT THOUSAND DOLLARS (\$28,000) be appropriated, same to be credited to Our Father's House Street Homeless Intervention Program and charged against the CDBG Year 44.
- 082-18. ORDERED THAT: The sum of TEN THOUSAND DOLLARS (\$10,000) be appropriated, same to be credited to MOC as Management Company of the United Neighbors of Fitchburg Building Empowered youth & Families Program and charged against the CDBG Year 44.
- 083-18. ORDERED THAT: The sum of TEN THOUSAND DOLLARS (\$10,000) be appropriated, same to be credited to the YMCA Spartacus Program and charged against the CDBG Year 44.
- 084-18. ORDERED THAT: The sum of SIXTY THOUSAND DOLLARS (\$60,000) be appropriated, same to be credited to the Fitchburg Police Department Drug Enforcement and Patrol Project and charged against the CDBG Year 44.
- 085-18. ORDERED THAT: The sum of SIXTEEN THOUSAND DOLLARS (\$16,000) be appropriated, same to be credited to the Boys and Girls Club of Fitchburg and Leominster Afterschool Transportation Program and charged against the CDBG Year 44.
- 086-18. ORDERED THAT: The sum of EIGHT THOUSAND DOLLARS (\$8,000) be appropriated, same to be credited the MIHN Family Housing/Pathways Program and charged against the CDBG Year 44.
- 087-18. ORDERED THAT: The sum of TWENTY-ONE THOUSAND DOLLARS (\$21,000) be appropriated, same to be credited to NewVue Communities Small Business Technical Assistance Program and charged against the CDBG Year 44.

Orders  
CDBG Year 44

- 088-18. ORDERED THAT: The sum of EIGHTY-SEVEN THOUSAND TWO HUNDRED FIFTY DOLLARS (\$87,250) be appropriated, same to be credited to the CDBG Business Loan Pool & Grants Program and charged against the CDBG Year 44.
- 089-18. ORDERED THAT: The sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000) be appropriated, same to be credited to the Fitchburg Board of Health Code Enforcement program and charged against the CDBG Year 44.
- 090-18. ORDERED THAT: The sum of TWENTY THOUSAND DOLLARS (\$20,000) be appropriated, same to be credited to the Fitchburg State University IdeaLab Build Out and charged against the CDBG Year 44.
- 091-18. ORDERED THAT: The sum of TWO HUNDRED SIXTY-FOUR THOUSAND SIX HUNDRED SIXTY-EIGHT DOLLARS (\$264,668) be appropriated, same to be credited to the Demolition of Abandoned Properties and charged against the CDBG Year 44.
- 092-18. ORDERED THAT: The sum of ONE HUNDRED SEVENTY-NINE THOUSAND DOLLARS (\$179,000) be appropriated, same to be credited to CDBG Planning and Administration and charged against the CDBG Year 44.

Orders adopted under Suspension of the Rules by unanimous vote.  
11 members present. Board consists of 11 members.  
Orders signed by the Mayor April 5, 2018.

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**ORDERS-FINANCE**

Orders-Finance

The following Orders were referred to the Finance Committee:

- 093-18. ORDERED THAT: There be and hereby is transferred from within the sum of THREE THOUSAND, ONE HUNDRED FIFTEEN AND 00/100 DOLLARS (\$3,115.00) same to be transferred from ELECTION & REGISTRATION, PERSONAL SERVICES, ELECTION WORKERS (\$2,634.00) and ELECTION & REGISTRATION, PERSONAL SERVICES, OVERTIME (\$481.00) and credited to CITY CLERK, PERSONAL SERVICES, ASSISTANT CITY CLERK (\$2,767.00) and CITY CLERK, PERSONAL SERVICES, OVERTIME (\$348.00)
- 094-18. ORDERED THAT: There be and hereby is appropriated the sum of SIX HUNDRED AND 00/100 DOLLARS (\$600.00) same to be charged against AVAILABLE FUNDS and credited to CITY CLERK, PERSONAL SERVICES, OVERTIME.
- 095-18. ORDERED THAT: There be and hereby is appropriated the sum of SIXTY-FIVE THOUSAND AND 00/100 DOLLARS (\$65,000.00) same to be charged against AVAILABLE FUNDS and credited to COUNCIL ON AGING, BUILDING MAINTENANCE for the purpose of improving the air quality in the basement of the Senior Center.

Orders-Finance

096-18. ORDERED THAT: The City of Fitchburg hereby approves the expenditure of funds from the Massachusetts Executive Office of Public Safety and Security grant in the approximate amount of \$4,418.40 (FOUR THOUSAND, FOUR HUNDRED EIGHTEEN AND 40/100 DOLLARS) for the purpose of said grant, which is to enhance effective pedestrian, bicycle, and moped-type enforcement.

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ORDERS-OTHER

Orders-Other

The following Orders were referred to the Council as a Whole Committee:

097-18. Authorizing Mayor DiNatale to approve and authorize the execution and delivery of the First Amendment to the Purchase and Sale Agreement dated June 12, 2015 between the City and NewVue Affordable Housing Corp. for the sale of BF Brown Middle School and all other related acts and documents.

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City of Fitchburg

FITCHBURG CITY CLERK

2018 MAR 29 AM 10:38

In City Council,

ORDERED:- That

WHEREAS, the City and NEWVUE AFFORDABLE HOUSING CORPORATION, formerly known as FITCHBURG AFFORDABLE HOUSING CORPORATION, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420, have entered into a Purchase and Sale Agreement for the structure formerly known as the B.F. Brown Middle School, located at 62 Academy Street in Fitchburg, dated June 12, 2015 and authorized by the City Council pursuant to Petition 21-2015, approved on March 24, 2015, and

WHEREAS, a fire which occurred on or about September 26, 2016 at said B.F. Brown Middle School, and exposure then and thereafter to water, weather and other conditions damaged the structure, particularly necessitating extensive repairs to the roof and windows and drying and cleaning beyond the cost anticipated by NewVue Affordable Housing Corporation in its proposal for rehabilitation and development of the B.F. Brown Middle School, and

WHEREAS, the City has received certain insurance proceeds as a result of said fire, and

WHEREAS, certain actions are necessary in order to accomplish the City's public purpose as expressed in the RFP, NewVue's proposal and the original Purchase and Sale Agreement,

NOW THEREFORE, IT IS ORDERED that the City of Fitchburg shall, through its Mayor Stephen L. DiNatale, approve and authorize the execution and delivery of the First Amendment to the Purchase and Sale Agreement dated June 12, 2015, between the City and NewVue Affordable Housing Corporation for the sale of B.F. Brown Middle School, and to authorize all other acts and documents which will be necessary, helpful or convenient, including, but not limited to, the execution of 1) a quitclaim deed (to be submitted), 2) closing documents, and 3) agreements in a form substantially similar to those which are attached, to effectuate and ensure the completion of the sale, rehabilitation and development of said B.F. Brown Middle School.

Orders-Other

**VINCENT P. PUSATERI, II.**

CITY SOLICITOR

128 PRICHARD STREET

FITCHBURG, MA 01420

TELEPHONE: (978) 342-6081

FAX: (978) 343-0600

EMAIL: vpusateri@pusaterilaw.com



**CHRISTINE M. TREE**

ASSISTANT CITY SOLICITOR

128 PRICHARD STREET

FITCHBURG, MA 01420

TELEPHONE: (978) 342-6081

FAX: (978) 343-0600

EMAIL: ctrees@pusaterilaw.com

**LAW DEPARTMENT OF THE CITY OF FITCHBURG**

March 29, 2018

Mayor Stephen L. DiNatale  
166 Boulder Drive  
Fitchburg, MA 01420

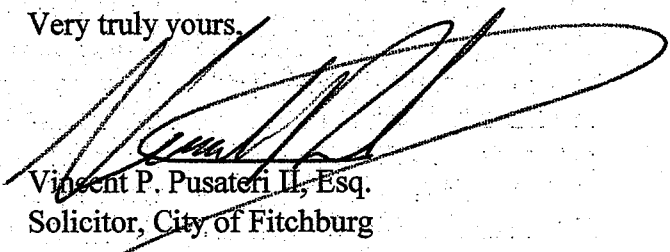
**RE: B.F. Brown Middle School**

Dear Mayor Stephen L. DiNatale,

As it appears to be in the best interests of the City of Fitchburg, kindly instruct the auditor to draft an order in the amount of ONE MILLION SIX HUNDRED THOUSAND AND 00/100 (\$1,600,000.00) DOLLARS AND NO CENTS, the same to be charged against RESERVED FOR APPROPRIATION, INSURANCE RECOVERIES OVER \$150,000.00 and credited to B.F. BROWN LEGAL, to be used to pay NEWVUE AFFORDABLE HOUSING CORPORATION, formerly known as FITCHBURG AFFORDABLE HOUSING CORPORATION, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420 to be held by their escrow agent pursuant and subject to the terms of an escrow agreement with the City of Fitchburg, for additional expenses incurred by said NewVue in repairing and renovating the roof and windows and in drying and cleaning the structure formerly known as the B.F. Brown Middle School, located at 62 Academy Street in Fitchburg, due to the fire which occurred at said B.F. Brown Middle School on or about September 26, 2016 and the exposure of the structure to water and weather since that time.

Please do not hesitate to let me if you have any questions or concerns.

Very truly yours,

  
Vincent P. Pusateri II, Esq.  
Solicitor, City of Fitchburg

VPP/dam

2018 MAR 29 AM 9:45

FITCHBURG CITY CLERK

**FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT**

WHEREAS the **CITY OF FITCHBURG**, a municipal corporation and body politic and corporate, with an address of City Hall Offices, 166 Boulder Drive, Fitchburg, MA 01420 ("SELLER") and **FITCHBURG AFFORDABLE HOUSING CORPORATION**, now known as **NEVVUE AFFORDABLE HOUSING CORPORATION**, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420 ("BUYER") (SELLER and BUYER are referred to collectively hereafter as the "Parties") entered into a **Purchase and Sale Agreement dated June 12, 2015** ("Purchase and Sale Agreement") for the sale of the land with the building thereon, formerly known as the BF Brown Junior High School, consisting of 1.757 acres, more or less, located at 62 Academy Street, Fitchburg ("the Premises"); and

WHEREAS, the roof of the building on the Premises was destroyed by fire on or about September 26, 2016; and

WHEREAS the Seller and Buyer have extended the time for performance thereafter by mutual agreement of counsel; and

WHEREAS, the Buyer has received an estimate for the cost of replacement of the roof and desires to perform under the Purchase and Sale Agreement in accordance with conditions set forth below; and

WHEREAS, the Seller desires to perform under the Purchase and Sale Agreement as modified in accordance with conditions set forth below as it has deemed necessary in order to accomplish its public purpose of economic and socioeconomic development of the neighborhood surrounding the Premises and the City of Fitchburg, preventing and ameliorating blight due to a large, vacant public building, preserving the historic and architectural features of the Premises, enhancing homeownership in the neighborhood surrounding the Premises, the creation of deed-restricted affordable housing as described in M.G.L. Ch. 40B through purposeful development rather than the imposition of a development project contrary to zoning, and the achievement of a 5% housing production goal necessary for eligibility to apply for grants from the Commonwealth as a Housing Choice Incentive Community; and

WHEREAS, Buyer has agreed not only to pay the purchase price stated therein, but also to take the Premises upon certain conditions, including but not limited to the condition that it complete the preservation, rehabilitation and development of the Premises, in substantial compliance with its proposal in offer to the Seller, into approximately 55 units of artist-preference housing, with at least thirty (30%) percent thereof to be market rate units, as well as affordable housing units, with artist studio and exhibition space, preserving the historic character of the buildings, and working with the Fitchburg Art Museum and other groups in partnership to



Orders-Other

drive Fitchburg's arts-based economy forward.

NOW THEREFORE, in consideration of the mutual promises contained in the Purchase and Sale Agreement as modified by this First Amendment to Purchase and Sale Agreement (referred to hereafter, the "Agreement") the Parties agree that Paragraphs 1, 2, 3, 4, 6, 19, 20, 20A, 21, 23 and 29 of the Purchase and Sale Agreement shall be replaced with the following, and that the Agreement shall remain unchanged in all other respects:

1. **PARTIES AND MAILING ADDRESSES.** All references to Buyer in Paragraph 1 and throughout the Agreement shall refer to FITCHBURG AFFORDABLE HOUSING CORPORATION, now known as NEWVUE AFFORDABLE HOUSING CORPORATION, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420. The original Paragraph 1 shall otherwise remain unchanged.
2. **PREMISES.** The reference in Paragraph 2 to the Premises shall be to the land, together with the buildings thereon, formerly known as B.F. Brown Junior High School, containing 1.757 acres, more or less, and is located at 62 Academy Street, Fitchburg, Massachusetts, identified in the Fitchburg Assessors Records as Map 30, Block 18, Lot 0. The Premises is part of the land that was conveyed to the Seller by deed dated January 20, 1922 and recorded in the Worcester North Registry of Deeds in Book 381, Page 306; see also deed dated April 2, 1883 and recorded in the Worcester North Registry of Deeds "Copies" Volume 53, Page 227; and deed dated June 22, 1920 and recorded in the Worcester North Registry of Deeds in Book 364, Page 234.
3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES.** Included in the sale as a part of the Premises are the building, structures, and improvements now thereon and the fixtures included therein. SELLER may remove all personal property from the Premises prior to the Closing Date defined in **Paragraph 6** below. Prior to the delivery of the Deed, the risk of loss shall be on the SELLER. SELLER shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Property. The parties acknowledge and agree that the Property has been damaged by fire and other casualty prior to the Closing Date, that the BUYER intends to rehabilitate the entire structure, and therefore a portion of the repair of any such loss is already provided for in the BUYERS original proposal, and that therefore the BUYER and SELLER, through their counsel, shall hold the sum of ONE MILLION SIX HUNDRED THOUSAND and no/100 (\$1,600,000.00) Dollars, allocated and appropriated by the Seller from the proceeds of insurance it has already received, to reimburse the Buyer for the excess expenses it experiences in repairing the roof, the windows and the cleaning and drying of the building. This figure includes a fifteen (15%) percent contingency in excess of the anticipated excess expenses. Consequently, the parties do not anticipate a one hundred percent (100%) assignment of any insurance proceeds. The parties will execute an escrow agreement in form substantially similar to the escrow agreement attached to this First Amendment as Exhibit A,

and shall distribute the funds therefrom at benchmarks of completion, or deadlines of noncompletion, to be finally set by written agreement at the time of closing. All unused funds held in escrow shall be returned to the Seller. All interest on said funds shall be paid to the Seller. As further consideration for such payments, the parties shall also execute an Environmental Release in form substantially similar to Exhibit B attached hereto.

4. **DEED.** At the time of closing, Seller shall convey the Premises by quitclaim deed as described in Paragraph 4 of the original Purchase and Sale Agreement, but said deed shall also contain a right of reverter, to be held by the Seller, to be exercised within seven (7) years of the date of said deed, if at all, if Buyer shall fail to complete the rehabilitation and development of the Premises in substantial compliance with the terms of Proposal dated October 15, 2014, which is attached hereto as Exhibit C.

6. **TIME FOR PERFORMANCE; DELIVERY OF DEED.** The deed is to be delivered at the Worcester North Registry of Deeds, or at such other place as agreed upon by the parties, on May 1, 2018, 1:00 PM (the "Closing Date"), unless such date is further extended by agreement of the Parties in writing, pursuant to Section 26 of this Agreement.

19. **INSPECTION ACKNOWLEDGMENT.** The BUYER acknowledges that it will take a deed to the premises in "AS IS" condition except for the insurance proceeds to be disbursed in accordance with Paragraph 3 of this Agreement, and that it will not look to the SELLER for any compensation for any of its costs or expenses in inspecting or evaluating the Premises either before or after its acceptance of a deed hereunder. The original Paragraph 19 shall remain otherwise unmodified.

20. **DUE DILIGENCE.** The parties agree that the Due Diligence Period has expired.

- 20A. **SELLER'S CONTINGENCY.** SELLER has issued final approval of the project set forth in the Proposal (the "Project") based upon to SELLER's approval of feasibility studies, market studies and financial projections provided by BUYER and is satisfied that the Project can be developed as artist housing, as outlined in the Proposal dated October 15, 2014 attached hereto as Exhibit C.

21. **LEAD PAINT.** BUYER acknowledges the premises is not a dwelling and therefore the obligations imposed by Massachusetts General Laws, Chapter 111, Section 197, relative to the presence of lead in paint, plaster or other accessible materials ("lead") does not apply to the subject transaction. The parties acknowledge and agree this Agreement imposes no obligation on the SELLER to remove or remediate any lead in the premises. SELLER makes no representation as to whether there is or is not lead in the Premises, including the soil.

23. **NOTICES.** All notices and other communications relative to this Agreement shall be given:

If to BUYER, at the following address:

NewVue Affordable Housing Corporation

Orders-Other

470 Main Street, Fitchburg, MA 01420  
Attn: Marc Dohan, Executive Director  
Tel: (978) 342-9561 ext. 119  
Fax: (978) 345-7905  
Email: [mdohan@nvcomm.org](mailto:mdohan@nvcomm.org)

With a copy to:

Kimberly L. Martin-Epstein, Esq.  
Hackett Feinberg, P.C.  
155 Federal Street, 9th Floor Boston, MA 02110  
Tel: (617) 422-0200 ext. 240  
email: [KLE@bostonbusinesslaw.com](mailto:KLE@bostonbusinesslaw.com)

If to SELLER, at the following address:

Stephen L. DiNatale, Mayor  
City Hall Offices - 166 Boulder Drive  
Fitchburg, MA 01420  
Tel: (978) 345-9550  
Fax: (978) 345-9553  
email:

With a copy to:

Vincent P. Pusateri, II, Esq.  
City Solicitor Law Department  
City Hall Offices - 166 Boulder Drive Fitchburg, MA 01420  
Tel: (978) 829-1806  
Fax: (978) 597-6233  
e-mail:

Any notice required or allowed by this Agreement shall be in writing. Any notice will be presumed to have been received by the addressee if mailed by certified mail, postage prepaid, to the addressee as specified above, or if personally delivered to the other party. Notice may otherwise be given in any manner required or permitted by law, including by facsimile or e-mail, but no presumption will arise unless notice is given in accordance with the previous sentence.

## 29. OTHER TERMS

A. This First Amendment to the Purchase and Sale Agreement binds the SELLER upon the vote of the Fitchburg City Council, signature of the Mayor of Fitchburg and approval by the City Solicitor as to form, a copy of which is attached hereto and made a

part hereof.

B. During the term of this Agreement the BUYER shall have permission to enter the Premises to conduct inspections and repairs thereof. Prior to undertaking such activities, BUYER shall execute a release and indemnification agreement in a form approved by the city and obtain and maintain, at its own cost and expense, Commercial General Liability coverage with limits for each occurrence of One Million (\$1,000,000.00) Dollars and Two Million (\$2,000,000.00) Dollars in the aggregate, issued by a company authorized to issue such policies in the Commonwealth of Massachusetts. SELLER shall be included as an additional insured for said coverage. SELLER hereby acknowledges that BUYER has satisfied the terms of this paragraph 29.B for activities performed at the Premises to date.

C. The parties agree that the BUYER shall have a license for the use by the BUYER and and/or its tenants of the parking spaces on the Premises during the pendency of this Agreement and that the BUYER shall be responsible for the maintenance and the removal of ice and snow from the licensed area. Prior to undertaking such activities, BUYER shall execute a release and indemnification agreement in a form approved by the city and obtain and maintain, at its own cost and expense, Commercial General Liability coverage with limits for each occurrence of One Million (\$1,000,000.00) Dollars and Two Million (\$2,000,000.00) Dollars in the aggregate, issued by a company authorized to issue such policies in the Commonwealth of Massachusetts. SELLER shall be included as an additional insured for said coverage. SELLER hereby acknowledges that BUYER has satisfied the terms of this paragraph 29.C for activities performed at the Premises to date.

Orders-Other

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Purchase and Sale Agreement under seal this \_\_ day of March, 2018.

<b>SELLER:</b> <b>CITY OF FITCHBURG</b>	<b>BUYER:</b> <b>FITCHBURG AFFORDABLE HOUSING CORPORATION, now known as NEWVUE AFFORDABLE HOUSING CORPORATION</b>
By: Stephen L. DiNatale, Mayor Duly authorized	By: Marc Dohan, Executive Director Duly authorized

Approved as to Form on \_\_\_\_\_, 2018:

\_\_\_\_\_  
By: Vincent P. Pusateri, II, Esq.  
City Solicitor Law Department

Approved by Fitchburg City Council on \_\_\_\_\_ 2018:

\_\_\_\_\_  
By: Michael Kushmerek,  
Council President

**EXHIBIT A****ESCROW AGREEMENT**

THIS ESCROW AGREEMENT, dated as of the \_\_\_\_ day of \_\_\_\_\_, 2018 (this "Agreement"), is entered into among NewVue Affordable Housing Corporation, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420 ("Owner"), the City of Fitchburg, a municipal corporation and body politic and corporate, with an address of City Hall Offices, 166 Boulder Drive, Fitchburg, MA 01420 (the "City") and \_\_\_\_\_ ("Escrow Agent").

**BACKGROUND**

A. Owner has obtained title to certain real property and improvements thereon as more particularly described on Exhibit A (the "Property") pursuant to a Purchase and Sale Agreement with the City as Seller dated June 12, 2015, as amended by a certain First Amendment to Purchase and Sale Agreement dated as of \_\_\_\_\_, 2018 (collectively, the "P&S").

B. The City has agreed to disburse a portion of the proceeds of a casualty insurance claim in connection with a fire at the Property to the Owner for the purpose of providing funds to repair the roof and the windows and clean and dry the interior of the building on the Property (the "repairs").

C. The Borrower has agreed to make the repairs which are generally described as repairs to the roof, sealing of window openings, to clean the building of debris and dry the building and to address damage or loss so long as the same was caused by the fire and being opened to the elements since that time. (The Scope of Work).

D. The City has agreed to place in escrow \$1,600,000.00 (the "Escrow Deposit") to secure the performance of the repairs.

E. Owner and the City desire to set forth the terms and conditions upon which the Escrow Deposit shall be held and disbursed, and Escrow Agent has agreed to provide escrow services on the terms and conditions set forth herein.

**AGREEMENTS**

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Escrow Deposit. On or prior to the date hereof, the City shall deposit with Escrow Agent immediately available funds in the amount of the Escrow Deposit. Escrow Agent shall deposit the Escrow Deposit into a client funds escrow account established pursuant to the terms hereof (the "Escrow Account").

2. Use of Escrow Deposit to Complete Repairs. Owner shall cause the repairs to be completed as set forth the scope of work and specifications, the schedule set forth therein. If the Parties conclude (i) that the repairs are not being performed in accordance with the scope of work

Orders-Other

or (ii) that the Owner is in default of its obligations under any agreement with the City and such default has continued beyond any applicable notice and cure period, if any (the occurrence of either (i) or (ii), a "Default"), the City shall have the right to use the Escrow Deposit to complete the repairs or demolition of the structure, so much thereof as can be completed. In either case, the City of Fitchburg will have the right to utilize the Escrow Deposits. Escrow Agent agrees that it shall only use the Escrow Deposit in order to complete of the scope of work. The City shall have the right to approve the use of the Escrow Deposit by the Owner for completion of the scope of work by reviewing and consenting to disbursement requests by the Owner.

The anticipated escrow disbursement is as follows:

**Schedule for Distribution**

NewVue Communities (or its assignee) and the City of Fitchburg will enter into a relationship that is similar to the relationship that the City has used in the past and that the state and funders use for construction projects.

1. NewVue will enter into a construction contract with its construction contractor, who will be bonded. We expect that this will be the low bidder.
2. Fitchburg will hire a third party to review the contracts, plans and specifications ahead of time and approve them.
3. The contractor will requisition the funding monthly, for the work that is complete. NewVue's architect will sign off on the work.
4. The contractor will provide a lien waiver each month that all of the contractor's subcontractors have been paid.
5. After the requisition is complete and approved by NewVue, the requisition will be approved by the City's reviewer to approve the requisition for payment.
6. NewVue submits the requisition for payment (less a retainage).
7. City pays requisition to NewVue and NewVue pays contractor. City retains the retainage. This amount is approximately 5% of the hard costs.
8. Upon completion the contractor requisitions the retainage and after NewVue and the City's reviewer approves it, the retainage is paid.
9. Contingency:
  - a. The project will include a contingency. If the contingency (or any other funds) are not used, the funds will be returned to the City.

3. **Release of Funds.** The Escrow Agent shall release the Escrow Deposit or portions thereof to the Owner for the purposes described in Section 2 above upon approval by the City, and shall provide the City and the City Solicitor with notice of such anticipated Release and obtain approval from the City prior to such Release. Upon completion of the repairs in accordance with the Construction Contract and satisfaction of the conditions to the final disbursement of the Escrow Deposit (anticipated to be the 5% retainage owed to the Contractor pursuant to the terms of the Construction Contract), the City and the Owner may request release of the remaining portion of the Escrow Deposit and Escrow Agent shall promptly release any remaining funds in the Escrow Account to the City.

4. Termination. This Agreement shall terminate upon the date on which all funds in the Escrow Account have been disbursed pursuant to the terms hereof.

5. Permitted Investments. Escrow Agent shall hold the Escrow Deposit in a segregated interest-bearing escrow account. All interest or other income earned thereon shall be paid to the City.

6. Conflicting Demands. If conflicting demands are made or conflicting notices are given to Escrow Agent with respect to this Agreement, or the Escrow Deposit, or if there is otherwise any disagreement between the City and the Owner relative to use of the Escrow Funds, or if the Escrow Agent shall believe in good faith that the rights of a claimant to funds in the Escrow Account are not absolutely clear, Escrow Agent shall be entitled to refuse to comply with any such claim or demand and to withhold and stop all further performance of this Agreement with respect to such Escrow Account or funds therein, so long as such disagreement shall continue. In so doing, Escrow Agent shall not be or become liable for damages to any party hereto or to any other person for its failure to comply with such conflicting or adverse demands or notices. Escrow Agent shall be entitled to so refrain and so refuse to act until (i) the entry of a final judgment, after all appeals have been exhausted or for which no further appeals are possible ("Final Judgment") or (ii) all differences shall have been resolved by agreement of the parties and Escrow Agent shall have been notified thereof in writing signed by Owner, the City and the City Solicitor. In the alternative, Escrow Agent may, but shall not be obligated to, file a suit in interpleader for a declaratory judgment for the purpose of having the respective rights of the claimants adjudicated, and/or may deposit with a court of competent jurisdiction any Escrow Deposit, in which event Owner agrees to pay all costs, expenses and attorneys' fees incurred by Escrow Agent in connection therewith. If Escrow Agent shall deposit any Escrow Deposit with such court, Escrow Agent shall be fully released and discharged from any and all duties and obligations hereunder.

7. Reliance by Escrow Agent. Escrow Agent may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties.

8. Limitation of Liability. Escrow Agent in acting as escrow agent hereunder shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement.

9. Resignation and Discharge. Escrow Agent may resign and be discharged from its duties and obligations as escrow agent hereunder by giving at least thirty (30) days prior written notice of such resignation specifying a date when such resignation shall take effect, provided that upon such resignation Escrow Agent shall either deliver the entire Escrow Deposit to a successor escrow agent agreed to by Owner and the City, or in the alternative deposit such Escrow Deposit with a court as set forth in this Agreement.

10. Indemnification of Escrow Agent. Owner and the City each hereby agree to indemnify and hold Escrow Agent harmless from and against any loss, liability or expense incurred without willful misconduct or gross negligence on the part of Escrow Agent arising out of or in connection with this Agreement and carrying out its duties as escrow agent hereunder, including,



Orders-Other

**EXHIBIT A**

**ESCROW AGREEMENT**

THIS ESCROW AGREEMENT, dated as of the \_\_\_ day of \_\_\_\_\_, 2018 (this "Agreement"), is entered into among NewVue Affordable Housing Corporation, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420 ("Owner"), the City of Fitchburg, a municipal corporation and body politic and corporate, with an address of City Hall Offices, 166 Boulder Drive, Fitchburg, MA 01420 (the "City") and \_\_\_\_\_ ("Escrow Agent").

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D. The City has agreed to place in escrow \$1,600,000.00 (the "Escrow Deposit") to secure the performance of the repairs.

E. Owner and the City desire to set forth the terms and conditions upon which the Escrow Deposit shall be held and disbursed, and Escrow Agent has agreed to provide escrow services on the terms and conditions set forth herein.

**AGREEMENTS**

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. Escrow Deposit. On or prior to the date hereof, the City shall deposit with Escrow Agent immediately available funds in the amount of the Escrow Deposit. Escrow Agent shall deposit the Escrow Deposit into a client funds escrow account established pursuant to the terms hereof (the "Escrow Account").

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or (ii) that the Owner is in default of its obligations under any agreement with the City and such default has continued beyond any applicable notice and cure period, if any (the occurrence of either (i) or (ii), a "Default"), the City shall have the right to use the Escrow Deposit to complete the repairs or demolition of the structure, so much thereof as can be completed. In either case, the City of Fitchburg will have the right to utilize the Escrow Deposits. Escrow Agent agrees that it shall only use the Escrow Deposit in order to complete of the scope of work. The City shall have the right to approve the use of the Escrow Deposit by the Owner for completion of the scope of work by reviewing and consenting to disbursement requests by the Owner.

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NewVue Communities (or its assignee) and the City of Fitchburg will enter into a relationship that is similar to the relationship that the City has used in the past and that the state and funders use for construction projects.

1. NewVue will enter into a construction contract with its construction contractor, who will be bonded. We expect that this will be the low bidder.
2. Fitchburg will hire a third party to review the contracts, plans and specifications ahead of time and approve them.
3. The contractor will requisition the funding monthly, for the work that is complete. NewVue's architect will sign off on the work.
4. The contractor will provide a lien waiver each month that all of the contractor's subcontractors have been paid.
5. After the requisition is complete and approved by NewVue, the requisition will be approved by the City's reviewer to approve the requisition for payment.
6. NewVue submits the requisition for payment (less a retainage).
7. City pays requisition to NewVue and NewVue pays contractor. City retains the retainage. This amount is approximately 5% of the hard costs.
8. Upon completion the contractor requisitions the retainage and after NewVue and the City's reviewer approves it, the retainage is paid.
9. Contingency:
  - a. The project will include a contingency. If the contingency (or any other funds) are not used, the funds will be returned to the City.

3. **Release of Funds.** The Escrow Agent shall release the Escrow Deposit or portions thereof to the Owner for the purposes described in Section 2 above upon approval by the City, and shall provide the City and the City Solicitor with notice of such anticipated Release and obtain approval from the City prior to such Release. Upon completion of the repairs in accordance with the Construction Contract and satisfaction of the conditions to the final disbursement of the Escrow Deposit (anticipated to be the 5% retainage owed to the Contractor pursuant to the terms of the Construction Contract), the City and the Owner may request release of the remaining portion of the Escrow Deposit and Escrow Agent shall promptly release any remaining funds in the Escrow Account to the City.

Orders-Other

4. Termination. This Agreement shall terminate upon the date on which all funds in the Escrow Account have been disbursed pursuant to the terms hereof.

5. Permitted Investments. Escrow Agent shall hold the Escrow Deposit in a segregated interest-bearing escrow account. All interest or other income earned thereon shall be paid to the City.

6. Conflicting Demands. If conflicting demands are made or conflicting notices are given to Escrow Agent with respect to this Agreement, or the Escrow Deposit, or if there is otherwise any disagreement between the City and the Owner relative to use of the Escrow Funds, or if the Escrow Agent shall believe in good faith that the rights of a claimant to funds in the Escrow Account are not absolutely clear, Escrow Agent shall be entitled to refuse to comply with any such claim or demand and to withhold and stop all further performance of this Agreement with respect to such Escrow Account or funds therein, so long as such disagreement shall continue. In so doing, Escrow Agent shall not be or become liable for damages to any party hereto or to any other person for its failure to comply with such conflicting or adverse demands or notices. Escrow Agent shall be entitled to so refrain and so refuse to act until (i) the entry of a final judgment, after all appeals have been exhausted or for which no further appeals are possible ("Final Judgment") or (ii) all differences shall have been resolved by agreement of the parties and Escrow Agent shall have been notified thereof in writing signed by Owner, the City and the City Solicitor. In the alternative, Escrow Agent may, but shall not be obligated to, file a suit in interpleader for a declaratory judgment for the purpose of having the respective rights of the claimants adjudicated, and/or may deposit with a court of competent jurisdiction any Escrow Deposit, in which event Owner agrees to pay all costs, expenses and attorneys' fees incurred by Escrow Agent in connection therewith. If Escrow Agent shall deposit any Escrow Deposit with such court, Escrow Agent shall be fully released and discharged from any and all duties and obligations hereunder.

7. Reliance by Escrow Agent. Escrow Agent may rely on and shall be protected in acting or refraining from acting upon any written notice, instruction or request furnished to it hereunder and believed by it to be genuine and to have been signed or presented by the proper party or parties.

8. Limitation of Liability. Escrow Agent in acting as escrow agent hereunder shall not be liable for any action taken or omitted by it in good faith and believed by it to be authorized or within the rights or powers conferred upon it by this Agreement.

9. Resignation and Discharge. Escrow Agent may resign and be discharged from its duties and obligations as escrow agent hereunder by giving at least thirty (30) days prior written notice of such resignation specifying a date when such resignation shall take effect, provided that upon such resignation Escrow Agent shall either deliver the entire Escrow Deposit to a successor escrow agent agreed to by Owner and the City, or in the alternative deposit such Escrow Deposit with a court as set forth in this Agreement.

10. Indemnification of Escrow Agent. Owner and the City each hereby agree to indemnify and hold Escrow Agent harmless from and against any loss, liability or expense incurred without willful misconduct or gross negligence on the part of Escrow Agent arising out of or in connection with this Agreement and carrying out its duties as escrow agent hereunder, including,

without limitation, attorneys' fees and/or the costs and expenses of defending itself against any claim or liability.

11. Escrow Agent Costs. Escrow Agent shall be entitled to receive reimbursement of its out-of-pocket costs incurred in the performance of its services hereunder. Such reimbursement may be deducted by Escrow Agent from the Escrow Deposit.

12. Interest and Investment Income. All interest and other investment income, if any, earned on and received into the Escrow Account or any of the funds on deposit therein (collectively, "Interest") shall be paid to the City.

13. Miscellaneous. The duties and responsibilities of the Escrow Agent hereunder shall be determined solely by the express provisions of this Agreement, and no other or further duties or responsibilities shall be implied. Except as otherwise described herein, the Escrow Agent shall not have any liability under, nor duty to inquire into the terms and provisions of any agreement or instructions, other than outlined in this Agreement.

Anything in this Agreement to the contrary notwithstanding, in no event shall the Escrow Agent acting in its capacity as escrow agent be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Escrow Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

This Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts without regard to principles of conflicts of law.

This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the parties hereto.

In any suit, action or proceeding relating to this Agreement in which any of the parties to this Agreement are adverse to any of the other parties hereto, all of the fees, costs and expenses incurred by the prevailing party or parties in such suit, action or proceeding, including, without limitation, reasonable attorneys fees and expert witness fees, shall be paid by the parties hereto who were adverse to such prevailing party or parties. The parties agree that in the event of litigation, the venue shall be in a court located in Worcester County.

No waiver by either party of any provision of this Agreement or of any breach by the other party hereunder shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by such party. Any consent to or approval of any act given by either party hereunder shall not be deemed to render unnecessary the obtaining of such party's consent to or approval of any subsequent act with respect to which such party's consent or approval is required hereunder. This Agreement shall not waive or abrogate the application of M.G.L. c. 258, as the same may be amended from time to time.

Orders-Other

[Signatures on Next Page]

*City of Fitchburg,* April 3, 2018

Orders-Other

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**CITY OF FITCHBURG**

By: \_\_\_\_\_  
Stephen L. DiNatale, Mayor

**Approved as to form:**

\_\_\_\_\_  
Vincent P. Pusateri, II, City Solicitor  
City Law Department

Orders-Other

NEWVUE AFFORDABLE HOUSING CORPORATION

By: \_\_\_\_\_  
Marc Dohan, Executive Director  
Duly Authorized

ESCROW AGENT

tbd

**FIRST AMENDMENT TO PURCHASE AND SALE AGREEMENT**

WHEREAS the **CITY OF FITCHBURG**, a municipal corporation and body politic and corporate, with an address of City Hall Offices, 166 Boulder Drive, Fitchburg, MA 01420 ("SELLER") and **FITCHBURG AFFORDABLE HOUSING CORPORATION, now known as NEWVUE AFFORDABLE HOUSING CORPORATION**, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420 ("BUYER") (SELLER and BUYER are referred to collectively hereafter as the "Parties") entered into a **Purchase and Sale Agreement dated June 12, 2015** ("Purchase and Sale Agreement") for the sale of the land with the building thereon, formerly known as the BF Brown Junior High School, consisting of 1.757 acres, more or less, located at 62 Academy Street, Fitchburg ("the Premises"); and

WHEREAS, the roof of the building on the Premises was destroyed by fire on or about September 26, 2016; and

WHEREAS the Seller and Buyer have extended the time for performance thereafter by mutual agreement of counsel; and

WHEREAS, the Buyer has received an estimate for the cost of replacement of the roof and desires to perform under the Purchase and Sale Agreement in accordance with conditions set forth below; and

WHEREAS, the Seller desires to perform under the Purchase and Sale Agreement as modified in accordance with conditions set forth below as it has deemed necessary in order to accomplish its public purpose of economic and socioeconomic development of the neighborhood surrounding the Premises and the City of Fitchburg, preventing and ameliorating blight due to a large, vacant public building, preserving the historic and architectural features of the Premises, enhancing homeownership in the neighborhood surrounding the Premises, the creation of deed-restricted affordable housing as described in M.G.L Ch. 40B through purposeful development rather than the imposition of a development project contrary to zoning, and the achievement of a 5% housing production goal necessary for eligibility to apply for grants from the Commonwealth as a Housing Choice Incentive Community; and

WHEREAS, Buyer has agreed not only to pay the purchase price stated therein, but also to take the Premises upon certain conditions, including but not limited to the condition that it complete the preservation, rehabilitation and development of the Premises, in substantial compliance with its proposal in offer to the Seller, into approximately 55 units of artist-preference housing, with at least thirty (30%) percent thereof to be market rate units, as well as affordable housing units, with artist studio and exhibition space, preserving the historic character of the buildings, and working with the Fitchburg Art Museum and other groups in partnership to



Orders-Other

drive Fitchburg's arts-based economy forward.

NOW THEREFORE, in consideration of the mutual promises contained in the Purchase and Sale Agreement as modified by this First Amendment to Purchase and Sale Agreement (referred to hereafter, the "Agreement") the Parties agree that Paragraphs 1, 2, 3, 4, 6, 19, 20, 20A, 21, 23 and 29 of the Purchase and Sale Agreement shall be replaced with the following, and that the Agreement shall remain unchanged in all other respects:

1. **PARTIES AND MAILING ADDRESSES.** All references to Buyer in Paragraph 1 and throughout the Agreement shall refer to FITCHBURG AFFORDABLE HOUSING CORPORATION, now known as NEWVUE AFFORDABLE HOUSING CORPORATION, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420. The original Paragraph 1 shall otherwise remain unchanged.
2. **PREMISES.** The reference in Paragraph 2 to the Premises shall be to the land, together with the buildings thereon, formerly known as B.F. Brown Junior High School, containing 1.757 acres, more or less, and is located at 62 Academy Street, Fitchburg, Massachusetts, identified in the Fitchburg Assessors Records as Map 30, Block 18, Lot 0. The Premises is part of the land that was conveyed to the Seller by deed dated January 20, 1922 and recorded in the Worcester North Registry of Deeds in Book 381, Page 306; see also deed dated April 2, 1883 and recorded in the Worcester North Registry of Deeds "Copies" Volume 53, Page 227; and deed dated June 22, 1920 and recorded in the Worcester North Registry of Deeds in Book 364, Page 234.
3. **BUILDINGS, STRUCTURES, IMPROVEMENTS, FIXTURES.** Included in the sale as a part of the Premises are the building, structures, and improvements now thereon and the fixtures included therein. SELLER may remove all personal property from the Premises prior to the Closing Date defined in Paragraph 6 below. Prior to the delivery of the Deed, the risk of loss shall be on the SELLER. SELLER shall continue to carry the fire and extended coverage insurance presently maintained on the buildings on the Property. The parties acknowledge and agree that the Property has been damaged by fire and other casualty prior to the Closing Date, that the BUYER intends to rehabilitate the entire structure, and therefore a portion of the repair of any such loss is already provided for in the BUYERS original proposal, and that therefore the BUYER and SELLER, through their counsel, shall hold the sum of ONE MILLION SIX HUNDRED THOUSAND and no/100 (\$1,600,000.00) Dollars, allocated and appropriated by the Seller from the proceeds of insurance it has already received, to reimburse the Buyer for the excess expenses it experiences in repairing the roof, the windows and the cleaning and drying of the building. This figure includes a fifteen (15%) percent contingency in excess of the anticipated excess expenses. Consequently, the parties do not anticipate a one hundred percent (100%) assignment of any insurance proceeds. The parties will execute an escrow agreement in form substantially similar to the escrow agreement attached to this First Amendment as Exhibit A,

and shall distribute the funds therefrom at benchmarks of completion, or deadlines of noncompletion, to be finally set by written agreement at the time of closing. All unused funds held in escrow shall be returned to the Seller. All interest on said funds shall be paid to the Seller. As further consideration for such payments, the parties shall also execute an Environmental Release in form substantially similar to Exhibit B attached hereto.

4. **DEED.** At the time of closing, Seller shall convey the Premises by quitclaim deed as described in Paragraph 4 of the original Purchase and Sale Agreement, but said deed shall also contain a right of reverter, to be held by the Seller, to be exercised within seven (7) years of the date of said deed, if at all, if Buyer shall fail to complete the rehabilitation and development of the Premises in substantial compliance with the terms of Proposal dated October 15, 2014, which is attached hereto as Exhibit C.

6. **TIME FOR PERFORMANCE; DELIVERY OF DEED.** The deed is to be delivered at the Worcester North Registry of Deeds, or at such other place as agreed upon by the parties, on May 1, 2018, 1:00 PM (the "Closing Date"), unless such date is further extended by agreement of the Parties in writing, pursuant to Section 26 of this Agreement.

19. **INSPECTION ACKNOWLEDGMENT.** The BUYER acknowledges that it will take a deed to the premises in "AS IS" condition except for the insurance proceeds to be disbursed in accordance with Paragraph 3 of this Agreement, and that it will not look to the SELLER for any compensation for any of its costs or expenses in inspecting or evaluating the Premises either before or after its acceptance of a deed hereunder. The original Paragraph 19 shall remain otherwise unmodified.

20. **DUE DILIGENCE.** The parties agree that the Due Diligence Period has expired.

- 20A. **SELLER'S CONTINGENCY.** SELLER has issued final approval of the project set forth in the Proposal (the "Project") based upon to SELLER's approval of feasibility studies, market studies and financial projections provided by BUYER and is satisfied that the Project can be developed as artist housing, as outlined in the Proposal dated October 15, 2014 attached hereto as Exhibit C.

21. **LEAD PAINT.** BUYER acknowledges the premises is not a dwelling and therefore the obligations imposed by Massachusetts General Laws, Chapter 111, Section 197, relative to the presence of lead in paint, plaster or other accessible materials ("lead") does not apply to the subject transaction. The parties acknowledge and agree this Agreement imposes no obligation on the SELLER to remove or remediate any lead in the premises. SELLER makes no representation as to whether there is or is not lead in the Premises, including the soil.

23. **NOTICES.** All notices and other communications relative to this Agreement shall be given:

If to BUYER, at the following address:

NewVue Affordable Housing Corporation

Orders-Other

470 Main Street, Fitchburg, MA 01420  
Attn: Marc Dohan, Executive Director  
Tel: (978) 342-9561 ext. 119  
Fax: (978) 345-7905  
Email: [mdohan@nvcomm.org](mailto:mdohan@nvcomm.org)

With a copy to:

Kimberly L. Martin-Epstein, Esq.  
Hackett Feinberg, P.C.  
155 Federal Street, 9th Floor Boston, MA 02110  
Tel: (617) 422-0200 ext. 240  
email: [KLE@bostonbusinesslaw.com](mailto:KLE@bostonbusinesslaw.com)

If to SELLER, at the following address:

Stephen L. DiNatale, Mayor  
City Hall Offices - 166 Boulder Drive  
Fitchburg, MA 01420  
Tel: (978) 345-9550  
Fax: (978) 345-9553  
email:

With a copy to:

Vincent P. Pusateri, II, Esq.  
City Solicitor Law Department  
City Hall Offices - 166 Boulder Drive Fitchburg, MA 01420  
Tel: (978) 829-1806  
Fax: (978) 597-6233  
e-mail:

Any notice required or allowed by this Agreement shall be in writing. Any notice will be presumed to have been received by the addressee if mailed by certified mail, postage prepaid, to the addressee as specified above, or if personally delivered to the other party. Notice may otherwise be given in any manner required or permitted by law, including by facsimile or e-mail, but no presumption will arise unless notice is given in accordance with the previous sentence.

## 29. OTHER TERMS

A. This First Amendment to the Purchase and Sale Agreement binds the SELLER upon the vote of the Fitchburg City Council, signature of the Mayor of Fitchburg and approval by the City Solicitor as to form, a copy of which is attached hereto and made a

part hereof.

B. During the term of this Agreement the BUYER shall have permission to enter the Premises to conduct inspections and repairs thereof. Prior to undertaking such activities, BUYER shall execute a release and indemnification agreement in a form approved by the city and obtain and maintain, at its own cost and expense, Commercial General Liability coverage with limits for each occurrence of One Million (\$1,000,000.00) Dollars and Two Million (\$2,000,000.00) Dollars in the aggregate, issued by a company authorized to issue such policies in the Commonwealth of Massachusetts. SELLER shall be included as an additional insured for said coverage. SELLER hereby acknowledges that BUYER has satisfied the terms of this paragraph 29.B for activities performed at the Premises to date.

C. The parties agree that the BUYER shall have a license for the use by the BUYER and and/or its tenants of the parking spaces on the Premises during the pendency of this Agreement and that the BUYER shall be responsible for the maintenance and the removal of ice and snow from the licensed area. Prior to undertaking such activities, BUYER shall execute a release and indemnification agreement in a form approved by the city and obtain and maintain, at its own cost and expense, Commercial General Liability coverage with limits for each occurrence of One Million (\$1,000,000.00) Dollars and Two Million (\$2,000,000.00) Dollars in the aggregate, issued by a company authorized to issue such policies in the Commonwealth of Massachusetts. SELLER shall be included as an additional insured for said coverage. SELLER hereby acknowledges that BUYER has satisfied the terms of this paragraph 29.C for activities performed at the Premises to date.

Orders-Other

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Purchase and Sale Agreement under seal this \_\_ day of March, 2018.

<b>SELLER:</b> <b>CITY OF FITCHBURG</b>	<b>BUYER:</b> <b>FITCHBURG AFFORDABLE HOUSING CORPORATION, now known as NEWVUE AFFORDABLE HOUSING CORPORATION</b>
By: Stephen L. DiNatale, Mayor Duly authorized	By: Marc Dohan, Executive Director Duly authorized

Approved as to Form on \_\_\_\_\_, 2018:

By: Vincent P. Pusateri, II, Esq.  
City Solicitor Law Department

Approved by Fitchburg City Council on \_\_\_\_\_ 2018:

By: Michael Kushmerek,  
Council President

*City of Fitchburg,*

April 3, 2018

Orders-Other

098-18.   Appropri. \$1,600,000.00, same to be charged against RESERVED FOR APPROPRIATION, INSURANCE RECOVERIES OVER \$150,000 and credited to LAW DEPARTMENT, BF BROWN MIDDLE SCHOOL to be used to pay NEWVUE AFFORDABLE HOUSING CORPORATION, as outlined in the enclosed Order.

**City of Fitchburg**

**FITCHBURG CITY CLERK**

**2018 MAR 29 AM 11: 04**

In City Council,

**ORDERED:— That**

there be and hereby is appropriated the sum of ONE MILLION, SIX HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,600,000.00) same to be charged against RESERVED FOR APPROPRIATION, INSURANCE RECOVERIES OVER \$150,000 and credited to LAW DEPARTMENT, BF BROWN MIDDLE SCHOOL to be used to pay NEWVUE AFFORDABLE HOUSING CORPORATION, formerly known as FITCHBURG AFFORDABLE HOUSING CORPORATION, a Massachusetts non-profit corporation having an address of 470 Main Street, Fitchburg, MA 01420, to be held by their escrow agent pursuant and subject to the terms of an escrow agreement with the City of Fitchburg, for additional expenses incurred by said NewVue Affordable in repairing and renovating the roof and windows and in drying and cleaning the structure formerly known as the B.F. Brown Middle School, located at 62 Academy Street in Fitchburg, due to the fire which occurred at said B.F. Brown Middle School on or about September 26, 2016 and the exposure of the structure to water and weather since that time.

Ordinances

ORDINANCES

032-18. AN ORDINANCE: Amending Chapter 56 of the City Code by adding a new Section 56-5, "Local Marijuana Sales Tax Rate" as outlined in the enclosed Ordinance.

CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 14 AM 11:46

AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Chapter 56 of the City Code, entitled "Alcoholic Beverages", shall be amended by adding a new Section 56-5, as follows:

"56-5 LOCAL MARIJUANA SALES TAX RATE

The local sales tax rate on the sales of marijuana or marijuana products, as permitted by G.L. c. 64N, §3, shall be three (3%) percent."

FOR REASON SAYS, in order to regulate the lawful cultivation, production, sale and consumption of non-medical marijuana for the public health, safety and welfare as the same may be permitted by G.L. c. 94G.

033-18. AN ORDINANCE: Amending chapter 56 of the City Code, entitled "Alcoholic Beverages", shall be amended by changing the title to "Alcoholic Beverages and Marijuana" as outlined in the enclosed Ordinance.

Ordinances

## CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 14 AM 11:45

### AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Chapter 56 of the City Code, entitled "Alcoholic Beverages", shall be amended by changing the title to "Alcoholic Beverages and Marijuana".

AND

That Section 56-1 of the City Code, entitled "Consumption and Possession," shall be amended by changing the title to "Public Consumption and Possession"; and by adding the following sentence before the first sentence of the section "No person shall smoke, eat, consume, or ingest in any way marijuana, as defined by G.L. c. 94G, §1(g) and G.L. c. 94C, §1, as the same may be amended, while in a public area."; and by striking the words "beverages, while" and inserting in their place the words "beverages while in a public area. For the purposes of this section, the term "public area" shall include any location". The amended ordinance shall read as follows:

#### "§56-1 PUBLIC CONSUMPTION AND POSSESSION"

No person shall smoke, eat, consume, or ingest in any way marijuana, as defined by G.L. c. 94G, §1(g) and G.L. c. 94C, §1, as the same may be amended, while in a public area. Unless in an area licensed by the Board of License Commissioners, no person shall drink any alcoholic beverage as defined in M.G.L. c. 138, § 1, or possess an opened container full or partially full of any alcoholic beverages while in a public area. For the purposes of this section, the term "public area" shall include any location on, in or upon any public way, upon any way to which the public has right of access, in any place to which members of the public have access as invitees or licensees, in any park or playground, conservation area or recreation area or on private land or place without consent of the owner or person in control thereof."

FOR REASON SAYS, in order to regulate the lawful cultivation, production, sale and consumption of non-medical marijuana for the public health, safety and welfare as the same may be permitted by G.L. c. 94G.

Ordinances were passed to a third and final reading and adopted to be enrolled and ordained by unanimous vote. 11 members present. Board consists of 11 members. Ordinances were signed by the Mayor April 5, 2018.



Ordinances

034-18. AN ORDINANCE: Amending Chapter 56 of the City Code by adding a new Section 56-3, "Marijuana Retailers" as outlined in the enclosed Ordinance.  
(Amended to allow 40% of the number of liquor licenses.)

**CITY OF FITCHBURG**

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 14 AM 11:46

**AN ORDINANCE**

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Chapter 56 of the City Code, entitled "Alcoholic Beverages", shall be amended by adding a new Section 56-3, as follows:

**"§56-3 MARIJUANA RETAILERS**

As defined and established in Section 181.65 of the Fitchburg City Code, the total number of Marijuana Retailers (MR's) for which a special permit or license may be granted by the City or any board, department or division thereof shall be limited to no more than 20% of the number of licenses issued within the city for the retail sale of alcoholic beverages not to be drunk on the premises where sold under G.L. c. 138, §15. No special permit or license may be granted for a MR which results in a violation of this limit."

**FOR REASON SAYS**, in order to regulate the lawful cultivation, production, sale and consumption of non-medical marijuana for the public health, safety and welfare as the same may be permitted by G.L. c. 94G.

Ordinance as amended was passed to a third and final reading and adopted to be enrolled and ordained by vote of 10 in favor and 1 opposed (Green). 11 members present. Board consists of 11 members.

Ordinance was signed by the Mayor April 5, 2018.

035-18. AN ORDINANCE: Amending Chapter 56 of the City Code by adding a new Section 56-4, "Social Marijuana Consumption" as outlined in the enclosed Ordinance.

Ordinances

## CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 14 AM 11:40

### AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Chapter 56 of the City Code, entitled "Alcoholic Beverages", shall be amended by adding a new Section 56-4, as follows:

#### "§56-4 SOCIAL MARIJUANA CONSUMPTION

On-site or social consumption of marijuana, as defined by G.L. c. 94G, §1(g) and G.L. c. 94C, §1, as the same may be amended, at any Marijuana Establishment (ME) as defined in Section 181.65, or any Registered Marijuana Dispensary (RMD) as defined in Section 181.10 herein, is hereby prohibited unless approved through citizen initiative ballot vote as set forth in G.L. c. 94G §3(b)."

**FOR REASON SAYS**, in order to regulate the lawful cultivation, production, sale and consumption of non-medical marijuana for the public health, safety and welfare as the same may be permitted by G.L. c. 94G.

Ordinance was passed to a third and final reading and adopted to be enrolled and ordained by vote of 10 in favor and 1 opposed (Squailia). 11 members present. Board consists of 11 members. Ordinance was signed by the Mayor April 5, 2018.

## Ordinances

036-18. AN ORDINANCE: Amending Section 132-63 of the City Code by inserting the following Paragraph defining the term "marijuana" after the definition of the word "drug" in the existing Ordinance as outlined in the enclosed Ordinance.

**CITY OF FITCHBURG**

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 14 AM 11:46

**AN ORDINANCE**

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Section 132-63 of the City Code, entitled "Definitions", shall be amended by inserting the following paragraph defining the term "marijuana" after the definition of the word "drug" in the existing ordinance:

**"MARIJUANA**

The substance defined as marijuana in M.G.L. c. 94G, §1(g) and G.L. c. 94C, §1, as the same may be amended from time to time."

**FOR REASON SAYS**, in order to regulate the lawful cultivation, production, sale and consumption of non-medical marijuana for the public health, safety and welfare as the same may be permitted by G.L. c. 94G.

- 037-18. AN ORDINANCE: That Paragraph A of Section 132-64 of the City Code, entitled "Prohibited Acts", shall be amended by inserting the words, "drugs, marijuana," after the words "any other private or public property where"; by inserting the words "drugs, marijuana," after the words "an underage person will or does consume any"; by inserting the words "drugs, marijuana," before the words "alcohol or alcoholic beverage with the intent to consume it" As outlined in the enclosed Ordinance.

## CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 FEB 14 AM 9:09

### AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Paragraph A of Section 132-64 of the City Code, entitled "Prohibited Acts", shall be amended by inserting the words, "drugs, marijuana," after the words "any other private or public property where"; by inserting the words "drugs, marijuana," after the words "an underage person will or does consume any"; by inserting the words "drugs, marijuana," before the words "alcohol or alcoholic beverage with the intent to consume it". The amended ordinance shall read as follows:

#### "§132-64 Prohibited Acts

A. It is unlawful for any person to host or allow an event or gathering at any residence or premises or on any other private or public property where drugs, marijuana, alcohol or alcoholic beverages are present, when the person knows or reasonably should know that an underage person will or does consume any drugs, marijuana, alcohol or alcoholic beverage, or possess any drugs, marijuana, alcohol or alcoholic beverage with the intent to consume it, and the person fails to take reasonable steps to prevent possession or consumption by the underage person.

B. A person shall be deemed in violation of this article if the person intentionally aides, advises, hires, counsels or conspires with or otherwise procures another to commit the prohibited act.

C. A person who hosts an event or gathering does not have to be physically present at the event or gathering to be found responsible."

**FOR REASON SAYS**, in order to regulate the lawful cultivation, production, sale and consumption of non-medical marijuana for the public health, safety and welfare as the same may be permitted by G.L. c. 94G.

Ordinances were passed to a third and final reading and adopted to be enrolled and ordained by unanimous vote. 11 members present. Board consists of 11 members. Ordinances were signed by the Mayor April 5, 2018.

Ordinances

062-18. AN ORDINANCE: Amending Section 169-76 of the City Code titled "Stop Intersections" (re: Stop sign on Columbus St. at intersection of St. Joseph Ave.) (Reference Petition #119-17)

**CITY OF FITCHBURG**

IN THE YEAR

2018 MAR -8 PM 3:32

**AN ORDINANCE**

Be it ordained by the City Council of the City of Fitchburg, as follows:

A stop sign shall be installed on Columbus Street at its intersection with St. Joseph Avenue.

Section 169-76 of the City Code, titled "Stop intersections" shall be amended by inserting a new line below the line beginning "Columbus Street" in regards to "Madison Avenue" and the following words shall be inserted thereon:

1. The words "Columbus Street" shall be inserted under the "Stop Sign On" column;
2. The word "West" shall be inserted under the "Direction of Travel" column;
3. The words "St. Joseph Avenue" shall be inserted under the "At Intersection of" column.

The resulting amendment will read as follows:

In accordance with the provisions of MGL c. 89, § 9, the following streets are designated as stop streets at the intersections indicated:

Stop Sign on  
Columbus Street

Direction of Travel  
West

At Intersection of  
St. Joseph Avenue

City of Fitchburg,

April 3, 2018

Ordinances

063-18. AN ORDINANCE: Amending Section 169-76 titled "Stop Intersections" (re: Stop signs on Mt. Globe St. at its intersection with Davis St.) (Reference Petition #299-17)

## CITY OF FITCHBURG

IN THE YEAR

2018 MAR -8 PM 3:08  
FITCHBURG CITY CLERK

### AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

Stop signs shall be installed on Mt. Globe Street at its intersection with Davis Street.

Section 169-76 of the City Code, titled "Stop intersections" shall be amended by inserting a new line below the line beginning "Mt. Elam Road" and the following words shall be inserted thereon:

1. The words "Mt. Globe Street" shall be inserted under the "Stop Sign On" column;
2. The word "Both" shall be inserted under the "Direction of Travel" column;
3. The words "Davis Street" shall be inserted under the "At Intersection of" column.

The resulting amendment will read as follows:

In accordance with the provisions of MGL c. 89, § 9, the following streets are designated as stop streets at the intersections indicated:

Stop Sign on  
Mt. Globe Street

Direction of Travel  
Both

At Intersection of  
Davis Street

## Ordinances

064-18. AN ORDINANCE: Amending Section 169-17 of the City Code titled "Stop Intersections" (re: Stop sign on Amriott St. at its intersection with King St.) (Reference Petition #280-17)

**CITY OF FITCHBURG**

IN THE YEAR

FITCHBURG CITY CLERK

2018 MAR -8 PM 3:09

**AN ORDINANCE**

Be it ordained by the City Council of the City of Fitchburg, as follows:

Stop signs shall be installed on Amriott Street at its intersection with King Street.

Section 169-76 of the City Code, titled "Stop intersections" shall be amended by inserting a new line below the line beginning "Allston Pl." and the following words shall be inserted thereon:

1. The words "Amriott Street" shall be inserted under the "Stop Sign On" column;
2. The word "Both" shall be inserted under the "Direction of Travel" column;
3. The words "King Street" shall be inserted under the "At Intersection of" column.

The resulting amendment will read as follows:

In accordance with the provisions of MGL c. 89, § 9, the following streets are designated as stop streets at the intersections indicated:

Stop Sign on  
Amriott Street

Direction of Travel  
Both

At Intersection of  
King Street

065-18. AN ORDINANCE: Amending Section 169-76 "Stop Intersections" and Section 169-77 "Yield Intersections" to replace a stop sign with a yield sign at the corner of Daniels St. and River St. (Reference Petition 229-17)

## CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 MAR -8 PM 3:09

### AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:  
To replace a stop sign with a yield sign that is located at the corners of Daniels Street and River Street due to it being a rotary.

Section 169-76 of the City Code, titled "Stop intersections" shall be amended by striking the line beginning "Daniels Street" in regards to the intersection on River Street in its entirety.

Section 169-77 of the City Code, titled "Yield intersections" shall be amended by inserting a line below the line beginning "Cottage Street" and the following words shall be inserted thereon:

1. The words "Daniels Street" shall be inserted under the "Stop Sign On" column;
2. The word "Both" shall be inserted under the "Direction of Travel" column;
3. The words "River Street" shall be inserted under the "At Intersection Of" column.

The resulting amendment will read as follows:

In accordance with the provisions of MGL c. 89, § 9, the following streets are designated as yield streets at the intersections and in the directions indicated:

Yield Sign on	Direction of Travel	At Intersection of
Daniels Street	North	River Street

Ordinances were passed to a third and final reading and adopted to be enrolled and ordained by unanimous vote. 11 members present. Board consists of 11 members. Ordinances were signed by the Mayor April 5, 2018.



Ordinances

099-18. AN ORDINANCE: That Chapter 120, Section 11 of the Code of the City of Fitchburg, entitled "Annual renewal certificate fees for flammable liquids", be deleted in its entirety.

## CITY OF FITCHBURG

IN THE YEAR

FITCHBURG CITY CLERK

2018 MAR 23 AM 9:06

### AN ORDINANCE

Be it ordained by the City Council of the City of Fitchburg, as follows:

That Chapter 120 section 11 of the Code of the City of Fitchburg, entitled "Annual renewal certificate fees for flammable liquids", be deleted in its entirety.

**FOR REASON SAYS**, in order to comply with the fee structure for flammables set by ordinance in Chapter 94 section.

Ordinance was passed to a first and second reading and ordered advertised by unanimous vote. 11 members present. Board consists of 11 members.

*City of Fitchburg,*

April 3, 2018

Petitions

**PETITIONS**

The following Petition was referred to a Public Hearing  
April 17, 2018:

- 100-18. Comcast of Massachusetts III, Inc., for a grant of location, to install a new underground conduit system to provide service to 29 and 37-43 Blossom Street.



FITCHBURG CITY CLERK

Comcast  
David R. Flewelling  
Specialist 2 Construction  
9 Forbes Road, Suite 9B  
Woburn, MA 01801  
Cell - 617-279-7864  
[dave\\_flewelling@comcast.com](mailto:dave_flewelling@comcast.com)

2018 MAR 26 PM 12:10

March 26, 2018

City Clerk  
City of Fitchburg  
City Hall  
166 Boulder Drive  
Fitchburg, MA 01420

RE: Blossom Street  
Fitchburg, MA

Dear Ms. Farrell:

Comcast of Massachusetts III, Inc. would like to request a hearing with the Fitchburg City Council for a grant of location. The purpose of the grant of location request is to install a new underground conduit system to provide service to 29 and 37- 43 Blossom Street.

**Blossom Street:** Starting at the existing Utility Pole No. 1/92. Excavating to install (2) 3" PVC Conduits 322' ± to a proposed 24"x 36" sidewalk vault. Continuing from the proposed vault with (2) 3" PVC Conduits 60' ±. As shown on the attached construction sketch.

Please feel free to call me with any questions; I can be reached at 617-279-7864.

Sincerely,

A handwritten signature in black ink, appearing to read "David R. Flewelling".

David R. Flewelling  
Specialist 2, Construction

Enclosure (3)

## Petitions

## PETITION OF COMCAST FOR LOCACTION FOR CONDUITS AND MANHOLES

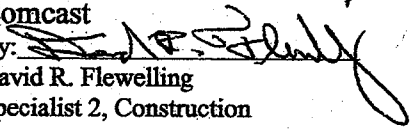
To the City Council for the City of Fitchburg, Massachusetts:

Respectfully represents Comcast of Massachusetts III, Inc., a company incorporated for the distribution of telecommunications services, that it desires to construct a line for such telecommunications under the public way or ways hereinafter specified.

**Blossom Street:** Starting at the existing Utility Pole No. 1/92. Excavating to install (2) 3" PVC Conduits 322' ± to a proposed 24"x 36" sidewalk vault. Continuing from the proposed vault with (2) 3" PVC Conduits 60' ±. As shown on the attached construction sketch.

Wherefore, your petition prays that, after due notice and hearing as provided by law, the City Council may by Order grant your petitioner permission to construct, and a location for, such a line of conduits and manholes with the necessary wires and cables therein, said conduits and manholes to be located, substantially as shown on the plan made by Comcast of Massachusetts III Inc. dated, March 26, 2018 and filed here with, under the following public way or ways of said City of Fitchburg:

Comcast

By:   
David R. Flewelling  
Specialist 2, Construction

Dated this March 26, 2018

City of Fitchburg Massachusetts

Received and filed \_\_\_\_\_, 2018

ORDER FOR CONDUIT LOCATION

In the City Council for the City of Fitchburg, Massachusetts.

ORDERED:

That permission be and hereby is granted to Comcast of Massachusetts III, Inc., to lay and maintain underground conduits and manholes, with the wires and cables to be placed therein, under the surface of the following public way or ways as requested in petition of said Company dated March 26, 2018

**Blossom Street:** Starting at the existing Utility Pole No. 1/92. Excavating to install (2) 3" PVC Conduits 322' ± to a proposed 24"x 36" sidewalk vault. Continuing from the proposed vault with (2) 3" PVC Conduits 60' ±. As shown on the attached construction sketch.

Substantially as shown on plan marked - Proposed Comcast Underground, filed with said petition.

Also that permission be and hereby is granted said Comcast to lay and maintain underground conduits, manholes, cables and wires in the above or intersecting public ways for the purpose of making connections with such poles and buildings as it may desire for distributing purposes.

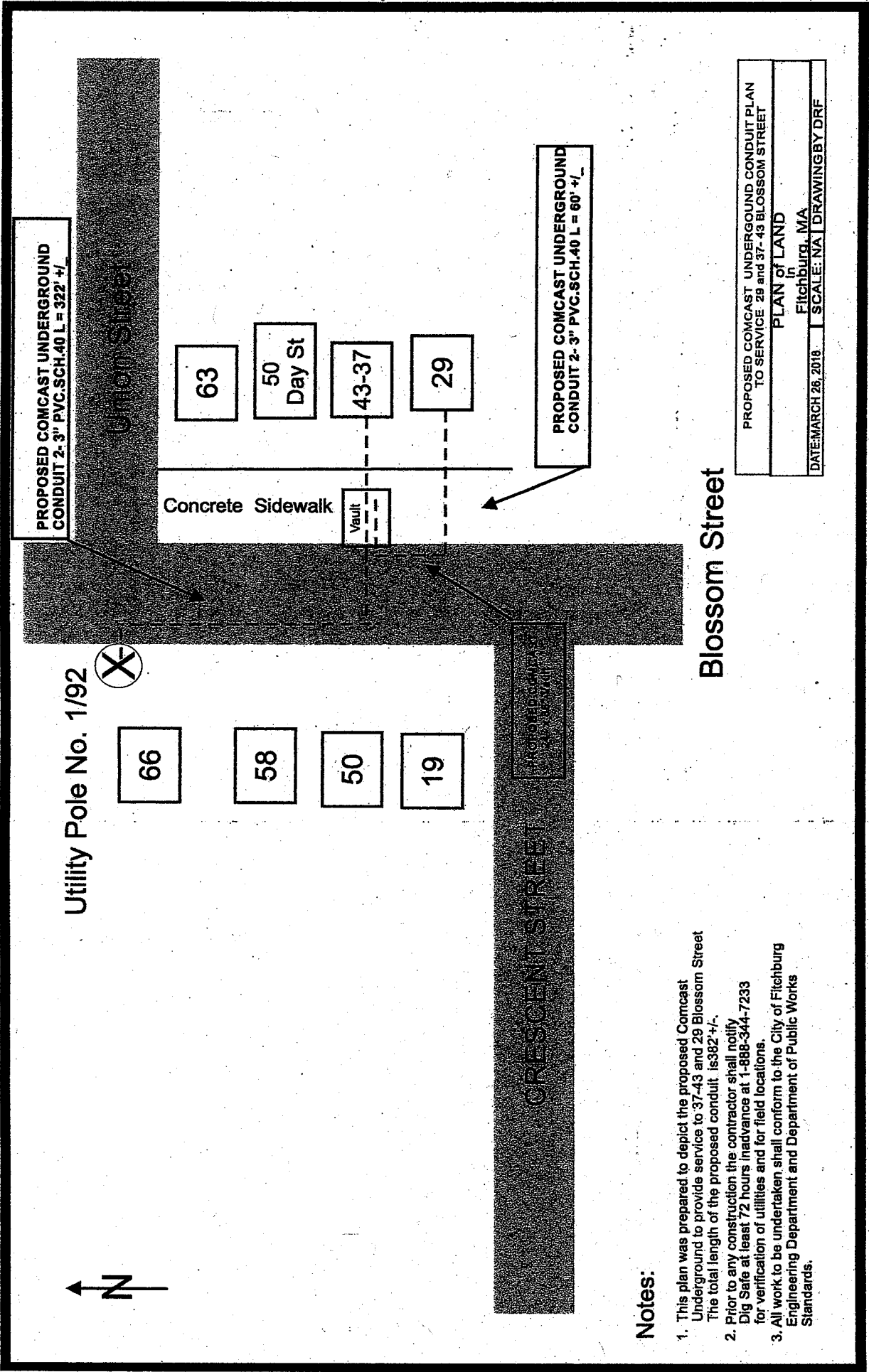
The foregoing permission is subject to the following conditions:

1. The conduits and manholes shall be of such materials and construction and all work done in such manner as to be satisfactory to the City Council or to such officers as it may appoint to the supervision of the work.
2. Said Company shall indemnify and save the City harmless against all damages, costs and expense whatsoever to which the City may be subjected in consequence of the acts or neglect of said Company, its agents or servants, or in any manner arising from the rights and privileges granted it by the City.
3. In addition said Company shall, before a public way is disturbed for the laying of its wire or conduits, execute its bond in a penal sum of One Hundred Thousand Dollars (\$100,000) (reference being had to the bond already on file with said City) conditioned for the faithful performance of its duties under this permit.
4. Said Company shall comply with the requirements of existing by-laws and such as may hereafter be adopted governing the construction and maintenance of conduits and wires, so far as the same are not inconsistent with the laws of the Commonwealth.

I hereby certify that the foregoing order was adopted at a meeting of the City Council for the City of Fitchburg, Massachusetts, held on the \_\_\_\_\_ day of \_\_\_\_\_ 2018.

(over)

Town Clerk



Petitions

The following Petition was referred to a Public Hearing  
April 17, 2018:

- 101-18. Lt. Philip Jordan, Fire Prevention Bureau, and  
Kevin D. Roy, Chief of Fire Department, to revoke the  
land license for flammable/combustible storage at 938  
Main Street, upon request of the land owner.

**TO THE HONORABLE CITY COUNCIL OF THE CITY OF FITCHBURG**

**Ladies and Gentlemen:**

**The undersigned Petition your Honorable Body to**

Revoke the land license for flammable/combustible storage at 938 Main Street, upon request of  
the land owner.

Lt. Philip Jordan -- Fire Prevention Bureau  
Kevin D. Roy -- Chief of Fire Department

2018 MAR 26 PM 1:19  
FITCHBURG CITY CLERK

Petitions



**Fire Prevention Director**  
**Lt. Phil Jordan**

**City of Fitchburg, Massachusetts**  
**FIRE PREVENTION BUREAU**

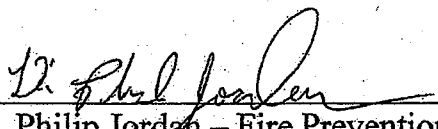
33 North Street  
Fitchburg, MA 01420


978-345-9672  
FAX: 978-345-9589

City Clerk: Anna Farrell  
Date: 3-26-2018

Please be advised that I have been requested to remove the Flammable/Combustible Licensing from the property of 938 Main Street (former gas station). I personally talked to Mr. Khalid and explained the fact that the property may not requalify for permit due to more stringent code requirements and he would potentially lose any grandfather status. He was advised of the information and still wishes to remove the Land License for fuel – regulated by the City of Fitchburg. The Fire Department can provide record of removal of the fuel storage tanks and soil sampling was performed. The only tank in question that exists – is a potential underground heating oil tank on the D-side of the building. Heating oil tanks, tied to a furnace for heating, are considered "consumptive use tanks" and are not regulated by DEP or the FD.

On the request of the owner, to my office, please remove the Land License for flammable fillable and remove the associated billing and fees. Please contact FD for any further questions or issues.

  
Lt. Philip Jordan – Fire Prevention Bureau

  
Kevin D Roy – Chief of Department

Petitions

The following Petition was referred to a City Council Public Hearing May 1, 2018, and the Planning Board:

102-18. The City of Fitchburg Planning Board, to amend section 181.13(c) 14-A of the Fitchburg Zoning Ordinance to allow "Seasonal Outdoor Dining" as a permitted use in the Industrial and Light Industrial districts, as shown on the attached.

Amend Sec. 181.13(c) 14, to allow "Seasonal Outdoor Dining" in the Limited Industrial & Industrial districts

PRINCIPAL USE:	RR	RA-1	RA-2	RB	RC	CBD	NBD	C&A	LI	I	MS	FSC
C. COMMERCIAL USES												
14. Restaurant	N	N	N	BA	BA	Y	Y	Y	PB	PB	N	PB
14A. Seasonal outdoor dining	N	N	N	Y	Y	Y	Y	N	N	Y	N	PB

SYMBOLS:

Y = Permitted Use

N = Prohibited Use

CC = Special Permit from City Council

PB = Special Permit from Planning Board

BA = Special Permit from Board of Appeals



Petitions

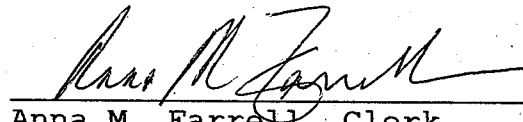
The following Petition was referred to the Public Safety Committee:

103-18. Councillor Marisa Fleming, to remove the No Parking Anytime signs (arrowed left to right) from in front of the corners of 111 Green Street and Morris Street and place No Parking Here to Corner.

The following Petition was referred to the Public Works Committee:

104-18. Councillor Michael Kushmerek, to install a berm, between Lyman St. and Caswell St., for the property located at 131 Longwood Ave. and repair the existing berm on the Lyman Street side of the property.

The meeting adjourned at 10:03 P.M.

  
Anna M. Farrell, Clerk

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